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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

मुख्य आयकर आयुक्त का कार्यालय

जयपुर, 22 मार्च, 2010

सं. 18/2009-2010

का.आ. 855.—आयकर नियम, 1962 के नियम 2 सीए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43वां) की धारा 10 के खण्ड (23 सी) की उप-धारा (6) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर एतद्वारा निर्धारण वर्ष 2009-2010 एवं आगे के लिए कथित धारा के उद्देश्य से "इण्डियन सोसायटी फोर एजुकेशनल इन्नोवेशन, जयपुर" को स्वीकृति देते हैं बशर्ते कि समिति आयकर नियम, 1962 के नियम 2सीए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उप-खण्ड (23 सी) की उप-धारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[ब्रह्मक : मुआआ/अआआ/(मु)जय/10(23सी)/(vi)09-10/5760]

बी.एस. दिल्ली, मुख्य आयकर आयुक्त

OFFICE OF THE CHIEF COMMISSIONER OF INCOME-TAX

Jaipur, the 22nd March, 2010

No. 18/2009-2010

S. O. 855.—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules, 1962, the Chief Commissioner of Income-tax, Jaipur hereby approves "Indian Society for Educational Innovation, Jaipur" for the purpose of said section for the A. Y. 2009-2010 & onwards :

Provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961, read with rule 2CA of the Income-tax Rules, 1962.

[No. CCIT/JPR/Addl. CIT (Hqrs.)/10 (23C)/(vi)/2009-10/5760]

B. S. DHILLON, Chief Commissioner of Income-tax

वित्त मंत्रालय

(राजस्व विभाग)

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 22 मार्च, 2010

का.आ. 856.—सर्वसाधारण की जानकारी के लिए एतद्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5ड के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उप-धारा (1) के खंड (iii) के प्रयोजनार्थ कर निर्धारण वर्ष 2009-2010 से आगे यूनिवर्सिटी आफ पेनसिलवेनिया इन्स्टीट्यूट फार दी एडवान्स स्टडी आफ इंडिया, नई दिल्ली को निम्नलिखित शर्तों के अधीन आंशिक रूप से अनुसंधान कार्यकलापों में लगे 'अन्य संस्था' की श्रेणी में अनुमोदित किया गया है, अर्थात् :—

- (i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग सामाजिक विज्ञान में अनुसंधान के लिए किया जाएगा;
- (ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से सामाजिक विज्ञान में अनुसंधान अथवा सांख्यिकीय अनुसंधान करेगा;
- (iii) अनुमोदित संगठन वैज्ञानिक अनुसंधान के लिए इसके द्वारा प्राप्त राशि के संबंध में अलग खाता बही रखेगा जिसमें अनुसंधान करने के लिए प्रयुक्त राशि दर्शाई गई हो, उक्त अधिनियम की धारा 288 की उप-धारा (2) के स्पष्टीकरण में यथापरिभाषित किसी लेखाकार से ऐसी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप-धारा (1) के अंतर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा;
- (i) अनुमोदित संगठन सामाजिक विज्ञान में अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित ऐसे विवरण की प्रति प्रस्तुत करेगा।

2. केन्द्र सरकार यह अनुमोदन वापस ले लेगी यदि अनुमोदित संगठन :—

- (क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा बही नहीं रखेगा; अथवा
- (ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा
- (ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित सामाजिक विज्ञान में अनुसंधान अथवा सांख्यिकीय अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत नहीं करेगा; अथवा
- (घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा; अथवा
- (ङ) उक्त नियमावली के नियम 5ग और 5ड के साथ पठित उक्त अधिनियम की धारा 35 की उप-धारा (1) के खंड (iii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा।

[अधिसूचना सं. 17/2010/फा. सं. 203/83/2009-आ.क.नि.-2]

डॉ. संजय कुमार लाल, अवर सचिव (आ.क.नि.-2)

MINISTRY OF FINANCE

(Department of Revenue)

(Central Board of Direct Taxes)

New Delhi, the 22nd March, 2010

S.O. 856.—It is hereby notified for general information that the organization University of Pennsylvannia Institute for the Advance Study of India, New Delhi has been approved by the Central Government for the purpose of clause (iii) of

sub-section (i) of Section 35 of the Income-tax Act, 1961 (said Act), read with rules 5C and 5E of the Income-tax Rules, 1962 (said Rules) from Assessment year 2009-2010 onwards in the category of 'other Institution' partly engaged in research activities subject to the following conditions, namely:—

- (i) The sums paid to the approved organization shall be utilized for research in social sciences;
 - (ii) The approved organization shall carry out research in social science or statistical research through its faculty members or its enrolled students;
 - (iii) The approved organization shall maintain separate books of accounts in respect of the sums received by it for scientific research, reflect therein the amounts used for carrying out research, get such books audited by an accountant as defined in the explanation to sub-section (2) of Section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (i) of Section 139 of the said Act;
 - (iv) The approved organization shall maintain a separate statement of donations received and amounts applied for research in social sciences and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.
2. The Central Government shall withdraw the approval if the approved organization :—
- (a) fails to maintain separate books of accounts referred to in sub-paragraph (iii) of paragraph 1; or
 - (b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or
 - (c) fails to furnish its statement of the donations received and sums applied for research in social sciences or statistical research referred to in sub-paragraph (iv) of paragraph 1; or
 - (d) ceases to carry on its research activities or its research activities are not found to be genuine; or
 - (e) ceases to conform to and comply with the provisions of clause (iii) of sub-section (i) of Section 35 of the said Act, read with rules 5C and 5E of the said Rules.

[Notification No. 17/2010/F. No. 203/83/2009-ITA-II]

Dr. SANJAY KUMAR LAL, Under Secy. (ITA-II)

(वित्तीय सेवाएं विभाग)

नई दिल्ली 26 मार्च, 2010

का.आ. 857.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9 के उप-खंड (1) और (2) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खण्ड (च) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार भारतीय रिजर्व बैंक से परामर्श करके एतद्वारा, श्री के. आनंदकुमार (जन्म तिथि : 30-08-1955), वरिष्ठ प्रबंधक, इंडियन ओवरसीज बैंक को अधिसूचना की तिथि से तीन वर्षों की अवधि के लिए अथवा जब तक वे इंडियन ओवरसीज बैंक के अधिकारी के रूप में अपना पद नहीं छोड़ देते अथवा अगले आदेशों तक, जो भी पहले हो, इंडियन ओवरसीज बैंक के निदेशक मंडल में अधिकारी कर्मचारी निदेशक के रूप में नामित करती है।

[फा. सं. 9/17/2009-बीओ-1]

सुमिता डावरा, निदेशक

(Department of Financial Services)

New Delhi, the 26th March, 2010

S.O. 857.—In exercise of the powers conferred by clause (f) of sub-section (3) of Section 9 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) & (2) of clause 9 of the Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby nominates Shri K. Anandakumar (DOB : 30-08-1955), Senior Manager, Indian Overseas Bank,

as Officer Employee Director on the Board of Directors of Indian Overseas Bank for a period of three years from the date of notification or until he ceases to be an officer of the Indian Overseas Bank or until further orders, whichever is the earliest.

[F.No. 9/17/2009-BO. I]

SUMITA DAWRA, Director

संचार एवं सूचना प्रौद्योगिकी मंत्रालय

(दूरसंचार विभाग)

नई दिल्ली, 30 मार्च, 2010

का.आ. 858.—सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) के भाग 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्र सरकार एतद्वारा उक्त अधिनियम के उद्देश्यार्थ, निम्नलिखित तालिका के कॉलम (2) में उल्लिखित मैसर्स आईटीआई लिमिटेड के अधिकारियों को सरकार के राजपत्रित अधिकारियों के रैंक के समकक्ष, संपदा अधिकारियों के रूप में नियुक्त करती है तथा आगे यह निदेश देती है कि उक्त अधिकारी उक्त तालिका के कॉलम (3) में निर्दिष्ट सरकारी स्थानों के संबंध में अपने अधिकार क्षेत्र की सीमाओं के भीतर, उक्त अधिनियम के द्वारा अथवा तहत, संपदा अधिकारियों को सौंपे गए कार्य और प्रदत्त शक्तियों का प्रयोग करेंगे :

तालिका

क्र.सं.	अधिकारी का पद नाम	सरकारी स्थानों की श्रेणियां तथा अधिकार क्षेत्र की स्थानीय सीमाएं
(1)	(2)	(3)
1.	मुख्य प्रबंधक, मानव संसाधन (विपणन) बेंगलोर-560016	मुम्बई, पुणे, अहमदाबाद, लखनऊ, कोलकाता, चैन्ने और नई दिल्ली में स्थित मैसर्स आईटीआई लिमिटेड के प्रशासनिक नियंत्रण के अंतर्गत परिसर।
2.	उप महा प्रबंधक (सिविल), मैसर्स आईटीआई लिमिटेड नैनी युनिट, नैनी, इलाहाबाद-211010	नैनी, इलाहाबाद में स्थित मैसर्स आईटीआई लिमिटेड के प्रशासनिक नियंत्रण के अंतर्गत परिसर।

[फा. सं. 1-1/2009-फैक्ट्री-II]

डॉ. विन्सेट बारला, निदेशक (पीएसयू-II)

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

(Department of Telecommunications)

New Delhi, the 30th March, 2010

S.O. 858.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the Officers of M/s. ITI Limited mentioned in column (2) of the Table below being Officers equivalent to the rank of Gazetted Officers of Government to be Estate Officers for the purposes of the said Act and further directs that the said Officers shall exercise the powers conferred, and the duties imposed, on Estate Officers, by or under the said Act, within the limits of their jurisdiction in respect of public premises specified in column (3) of the said Table:

TABLE

S. No.	Designation of the Officer	Categories of public premises and local limits of jurisdiction
(1)	(2)	(3)
1.	Chief Manager, Human Resources (Marketing) Bangalore-560016	Premises under the administrative control of M/s. ITI Limited located at Mumbai, Pune, Ahmedabad, Lucknow, Kolkata, Chennai and New Delhi.
2.	Deputy General Manager (Civil), M/s. ITI Limited Naini Unit, Naini, Allahabad-211010	Premises under the administrative control of M/s. ITI Limited located at Naini, Allahabad.

[F.No. 1-1/2009-Fac-II]

Dr. VINCENT BARLA, Director (PSU-II)

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 4 मार्च, 2010

का.आ. 859.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक(कों) में संशोधन किया गया है :

अनुसूची

क्र. सं.	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
I.	आई एस 9271:2004	2 फरवरी, 2010	24-2-2010

इस संशोधन की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, नागपुर, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : सीईडी/राजपत्र]

ए. के. सैनी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 4th March, 2010

S.O. 859.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. and year of the Indian Standard	No. and year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
I.	IS 9271:2004	2 February, 2010	24 February, 2010

Copy of this amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: CED/Gazette]

A. K. SAINI, Sc 'F' & Head (Civil Engg.)

नई दिल्ली, 17 मार्च, 2010

का.आ. 860.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिये गये हैं वे स्थापित हो गए हैं :

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
I.	आई एस 10694 (भाग 2): 2009 स्वचल वाहन-रिम सामान्य अपेक्षाएं भाग 2 यात्री कार (दूसरा पुनरीक्षण)	10694 (भाग 2): 1996	31 जुलाई, 2009

(1)	(2)	(3)	(4)
2.	आई एस 10694 (भाग 8) : 2009 स्वचल वाहन-रिम सामान्य अपेक्षाएं भाग 8 अर्थमूविंग मशीन के रिम (पहला पुनरीक्षण)	10694 (भाग 8) : 1983	31 जुलाई, 2009

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयंबटूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : टीईडी/जी-16]

टी. वी. सिंह, वैज्ञानिक 'एफ' एवं प्रमुख (टी ई डी)

New Delhi, the 17th March, 2010

S.O. 860.—In pursuance of clause (b) of sub-rule (1) of Rules 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl. No.	No., Year & title of the the Indian Standards Established	No. & year of Indian Standards, if any, superseded by the New Indian Standard	Date Established
(1)	(2)	(3)	(4)
1.	IS 10694 (Part 2) : 2009 Automotive vehicles Rims General Requirements Part 2 passenger car (Second revision)	10694 (Part 2) : 1996	31 July, 2009
2.	IS 10694 (Part 8) : 2009 Automotive vehicles Rims General Requirements Part 8 Earthmoving machine rims (First revision)	10694 (Part 8) : 1983	31 July, 2009

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Anmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: TED/G 16]

T. V. SINGH, Scientist 'F' & Head (Transport Engg.)

कोयला मंत्रालय

नई दिल्ली, 29 मार्च, 2010

का. आ. 861.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 7 की उप-धारा (1) के अधीन जारी भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्या का.आ. 3280 तारीख 26 नवम्बर, 2009 जो भारत के राजपत्र भाग-II, खंड-3, उप-खण्ड (ii) तारीख 5 दिसम्बर, 2009 में प्रकाशित की गई थी, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि या उस पर के सभी अधिकारों का 752.456 हेक्टर (लगभग) या 1859.31 एकड़ (लगभग) भूमि अर्जन करने के अपने आशय की सूचना दी थी;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 8 के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार को पूर्वोक्त रिपोर्ट पर विचार करने के पश्चात् और छत्तीसगढ़ सरकार से परामर्श करने के पश्चात् यह समाधान हो गया है कि इससे संलग्न अनुसूची में वर्णित 752.456 हेक्टर (लगभग) या 1859.31 एकड़ (लगभग) माप वाली भूमि के सभी अधिकार अर्जित किए जाने चाहिएं;

अतः अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 9 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इससे संलग्न अनुसूची में वर्णित 752.456 हेक्टर (लगभग) या 1859.31 एकड़ (लगभग) माप वाली भूमि के सभी अधिकार अर्जित किए जाते हैं;

इस अधिसूचना के अन्तर्गत आने वाले क्षेत्र के रेखांक सं. एसईसीएल/बीएसपी/जीएम/पीएलजी/भूमि/375, तारीख 29 जनवरी, 2010 का निरीक्षण कलेक्टर, कोरबा (छत्तीसगढ़) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाऊस स्ट्रीट, कोलकाता (700 001) के कार्यालय में या साउथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है।

अनुसूची

जटराज ब्लॉक, दूसरा विस्तार, कुसमुण्डा क्षेत्र

जिला-कोरबा (छत्तीसगढ़)

[रेखांक संख्या एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/375, दिनांक 29 जनवरी, 2010]

सभी अधिकारः—

(क) राजस्व भूमि :

क्रम सं.	ग्राम का नाम	पटवारी हल्का संख्या	ग्राम संख्या	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पण
1.	रिस्दी	36	367	कटघोरा	कोरबा	139.793	संपूर्ण
2.	पडनिया	36	364	कटघोरा	कोरबा	242.873	संपूर्ण
3.	पाली	36	365	कटघोरा	कोरबा	131.565	संपूर्ण
4.	जटराज (सर्वेक्षण रहित)	36	369	कटघोरा	कोरबा	25.515	भाग
5.	सोनपुरी	36	368	कटघोरा	कोरबा	172.166	भाग

(लगभग) कुल क्षेत्र : 711.912 हेक्टर (लगभग) या 1759.13 एकड़

(ख) राजस्व वन भूमि :

क्रम सं.	ग्राम का नाम	पटवारी हल्का संख्या	ग्राम संख्या	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पण
1.	रिस्दी	36	367	कटघोरा	कोरबा	18.518	संपूर्ण
2.	पडनिया	36	364	कटघोरा	कोरबा	0.052	संपूर्ण
3.	पाली	36	365	कटघोरा	कोरबा	0.194	संपूर्ण
4.	जटराज (सर्वेक्षण रहित)	36	369	कटघोरा	कोरबा	0.000	भाग
5.	सोनपुरी	36	368	कटघोरा	कोरबा	21.780	भाग

कुल : 40.544 हेक्टर (लगभग) या 100.18 एकड़ (लगभग)

कुल योग (क+ख): 752.456 हेक्टर (लगभग)

या 1859.31 एकड़ (लगभग)

1. ग्राम रिस्दी (संपूर्ण) में अर्जित किए जाने वाले प्लॉट संख्या : 1 से 585

2. ग्राम पडनिया (संपूर्ण) में अर्जित किए जाने वाले प्लॉट संख्या : 1 से 968

3. ग्राम पाली (संपूर्ण) में अर्जित किए जाने वाले प्लॉट संख्या : 1 से 502

4. ग्राम जटराज (सर्वेक्षण रहित) (भाग) में अर्जित किए जाने वाले प्लॉट संख्या :

31(भाग), 60(भाग), 61 से 63, 65 से 67, 90 से 92, 95(भाग), 97, 101, 102, 104, 106, 108, 109, 111, 115, 116, से 118 123(भाग), 127, 128, 135(भाग), 139 से 142, 144, 145, 146(भाग), 147 से 150, 152 से 159, 161 से 165, 168 से 182,

183(भाग), 184 से 186, 188, 189, 190(भाग), 191, 192(भाग), 231(भाग), 234, 235, 242, 244, 245, 247, 250 से 255, 257, 259, से 263 ।

5. ग्राम सोनपुरी (भाग) में अर्जित किए जाने वाले प्लॉट संख्या :

1 से 322, 323(भाग), 324, 325(भाग), 326, 327, 328(भाग), 336(भाग), 337 से 416, 417(भाग), 418 से 420, 421(भाग), 446(भाग), 447 से 460 ।

सीमा वर्णन :

- क-ख : रेखा बिन्दु 'क' से आरंभ होती है और ग्राम रिस्दी-दुरपा, पाली-बरकुटा के सम्मिलित सीमा से गुजरती हुई ग्राम जटराज-बरकुटा के सम्मिलित सीमा में बिन्दु 'ख' पर मिलती है ।
- ख-ग : रेखा ग्राम जटराज से गुजरती हुई ग्राम जटराज-सोनपुरी के सम्मिलित सीमा में बिन्दु 'ग' पर मिलती है ।
- ग-घ : रेखा ग्राम सोनपुरी के प्लॉट संख्या 328, 325, 323, 336 से होकर 416 के उत्तरी सीमा और 417 से गुजर कर प्लॉट संख्या 419 के उत्तरी सीमा तथा 421 से गुजरती है उसके बाद 447 के उत्तरी सीमा से होती हुई बिन्दु 'घ' पर मिलती है ।
- घ-ङ : रेखा ग्राम सोनपुरी के पूर्वी, दक्षिणी तथा पश्चिमी सीमा से गुजरती हुई ग्राम खैरभावना-सोनपुरी-पडनिया के सम्मिलित सीमा में बिन्दु 'ङ' पर मिलती है ।
- ङ-च : रेखा ग्राम खैरभावना-पडनिया, कनबेरी-पडनिया, जपेली-पडनिया के सम्मिलित सीमा से होती हुई बिन्दु 'ग' पर मिलती है ।
- च-क : रेखा ग्राम जपेली-रिस्दी, आमगांव-रिस्दी, गेवरा-रिस्दी के सम्मिलित सीमा से होती हुई आरंभिक बिन्दु 'क' पर मिलती है ।

[फा. सं. 43015/12/2009-पी आर आई डब्ल्यू-1]

एम. शहाबुद्दीन, अवर सचिव

MINISTRY OF COAL

New Delhi, the 29th March, 2010

S.O. 861.—Whereas, by the notification of the Government of India in the Ministry of Coal, number S.O. 3280, dated the 26th November, 2009, issued under Sub-Section (1) of Section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 5th December, 2009, the Central Government gave notice of its intention to acquire 752.456 hectares (approximately) or 1859.31 acres (approximately) land as all rights in or over such lands specified in the Schedule appended to that notification;

And, whereas, the competent authority in pursuance of Section 8 of the said Act has made his report to the Central Government;

And, whereas, the Central Government after considering the aforesaid report and after consulting the Government of Chhattisgarh, is satisfied that the lands measuring 752.456 hectares (approximately) or 1859.31 acres (approximately) as all rights in or over such lands as described in the Schedule appended hereto, should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 9 of the said Act, the Central Government hereby declares that the land measuring 752.456 hectares (approximately) or 1859.31 acres (approximately) as all rights in or over such lands as described in the Schedule are hereby acquired.

The Plan bearing No. SECL/BSP/GM/(PLG)/LAND/375, dated, the 29th January, 2010 of the area covered by this notification may be inspected at the Office of the Collector, Korba, (Chhattisgarh) or at the office of the Coal Controller, I, Council House Street, Kolkata - 700001 or at the Office of the South Eastern Coalfield Limited (Revenue Section), Seepat Road, Bilaspur-495006 (Chhattisgarh).

SCHEDULE

**Jatraj Block, 2nd Extension, Kusmunda Area
District Korba, (Chhattisgarh)**

[Plan number SECL/BSP/GM/(PLG)/LAND/375, dated the 29th January, 2010]

All Rights:**(A) Revenue Land :**

Sl. No.	Name of Village	Patwari halka Number	Village Number	Tahsil	District	Area in Hectares	Remarks
1.	Risdi	36	367	Katghora	Korba	139.793	Full
2.	Padania	36	364	Katghora	Korba	242.873	Full
3.	Pali	36	365	Katghora	Korba	131.565	Full
4.	Jatraj (Unsurveyed)	36	369	Katghora	Korba	25.515	Part
5.	Sonpuri	36	368	Katghora	Korba	172.166	Part
Total : 711.912 hectares (approximately) or 1759.13 acres (approximately).							

(B) Revenue Forest Land :

Sl. No.	Name of Village	Patwari halka Number	Village Number	Tahsil	District	Area in Hectares	Remarks
1.	Risdi	36	367	Katghora	Korba	18.518	Full
2.	Padania	36	364	Katghora	Korba	0.052	Full
3.	Pali	36	365	Katghora	Korba	0.194	Full
4.	Jatraj (Unsurveyed)	36	369	Katghora	Korba	0.000	Part
5.	Sonpuri	36	368	Katghora	Korba	21.780	Part
Total: 40.544 hectares (approximately) or 100.18 acres (approximately).							

Grand Total (A+B) : 752.456 hectares (approximately)
or 1859.31 acres (approximately).

1. Plot numbers to be acquired in village Risdi (Full): 1 to 585.
2. Plot numbers to be acquired in village Padania (Full): 1 to 968.
3. Plot numbers to be acquired in village Pali (Full): 1 to 502.
4. Plot numbers to be acquired in village Jatraj (Unsurveyed) (Part): 31 (P), 60(P), 61 to 63, 65 to 67, 90 to 92, 95(P), 97, 101, 102, 104, 106, 108, 109, 111, 115, 116 to 118, 123(P), 127, 128, 135(P), 139 to 142, 144, 145, 146(P), 147 to 150, 152 to 159, 161 to 165, 168 to 182, 183(P), 184 to 186, 188, 189, 190(P), 191, 192(P), 231(P), 234, 235, 242, 244, 245, 247, 250 to 255, 257, 259 to 263.
5. Plot numbers to be acquired in village Sonpuri (Part): 1 to 322, 323(P), 324, 325(P), 326, 327, 328(P), 336(P), 337 to 416, 417(P), 418 to 420, 421(P), 446(P), 447 to 660.

Boundary Description :

- A-B : Line starts from point "A" and passes along the common boundary of villages Risdi - Durpa, Pali - Barkuta and meets at point "B" on the common boundary of villages Jatraj - Barkuta.
- B-C : Line passes through village Jatraj and meets at point "C" on the common boundary of villages Sonpuri - Jatraj.
- C-D : Line passes in village Sonpuri through plot numbers 328, 325, 323, 336, northern boundary of plot No. 416, through 417, northern boundary of plot No. 419, through 421, northern boundary of plot No. 447 and meets at point "D"
- D-E : Line passes along eastern, southern and western village boundary of village Sonpuri and meets at point "E" or the common boundary of villages Sonpuri-Khairbhauna-Padania.
- E-F : Line passes along the common boundary of villages Padania - Khairbhauna, Kanberi - Padania, Padania - Japeli and meets at point "F".
- F-A : Line passes along the common boundary of villages Risdi - Japeli, Risdi - Amgaon, Risdi - Gevra and meets at starting point "A".

[No. 43015/12/2009- PRIW-I]
M. SHAHABUDEEN, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 11 मार्च, 2010

का.आ. 862.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि पारादीप (उड़ीसा) से रायपुर (छत्तीसगढ़) एवं राँची (झारखण्ड) तक पेट्रोलियम उत्पादों के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा “पारादीप-न्यू सम्बलपुर-रायपुर-राँची पाइपलाइन” बिछाई जानी चाहिए;

और केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि, जिसके नीचे पाइपलाइन बिछाई जाने का प्रस्ताव है और जो इस अधिसूचना से उपाबद्ध अनुसूची में वर्णित है, में उपयोग के अधिकार का अर्जन किया जाए;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उनमें उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर, उसमें उपयोग के अधिकार का अर्जन करने या भूमि के नीचे पाइपलाइन बिछाए जाने के संबंध में श्री सुकान्त कुमार प्रधान, सक्षम प्राधिकारी, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, पारादीप-न्यू सम्बलपुर-रायपुर-राँची पाइपलाइन परियोजना, 1295, फॉरेस्ट पार्क, भुवनेश्वर-751009 (उड़ीसा) को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

तहसील-सोहेला	जिला-बरगढ़	राज्य-उड़ीसा		
गांव का नाम	प्लॉट नं.	क्षेत्रफल		
		हेक्टेयर	एयर	वर्ग मीटर
(1)	(2)	(3)	(4)	(5)
बिसिपालि	1107	00	45	91
	1083	00	02	80
	1072	00	02	96
	1071	00	02	43
	1070	00	01	23
	1059	00	52	50
	1055	00	14	07
	1053	00	28	76
नअगाँ	158	00	04	55
	157	00	06	13
	152	00	03	51

(1)	(2)	(3)	(4)	(5)
नअगाँ (जारी)-	189	00	01	14
	135	00	15	78
	136	00	08	00
	137	00	06	60
	138	00	16	12
	115	00	11	63
	139	00	00	96
	141	00	07	17
	140	00	03	81
	143	00	04	48
	79	00	09	58
	80	00	06	47
	78	00	15	57
	77	00	10	88
	74	00	04	26
	64	00	02	02
	63	00	03	73
	62	00	01	71
	56	00	13	15
	61	00	00	27
	60	00	04	20
	59	00	05	20
डुम्बेरपालि	749	00	02	12
	411	00	07	50
	393	00	09	00
	395	00	24	30
	391	00	01	13
	396	00	00	10
	397	00	07	21
	390	00	00	20
	386	00	01	93
	398	00	05	15
	367	00	02	95
	790	00	02	70
	332	00	00	18
	331	00	04	55
	789	00	05	85
	337	00	16	97
	346	00	04	57

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
डुम्बेरापालि—(जारी)	347	00	00	53	कनगाँ—(जारी)	1042	00	00	10
	345	00	03	37		1032	00	01	20
	349	00	00	10		1035	00	17	90
	350	00	12	48		1002	00	01	35
	355	00	01	35		1001	00	03	89
	353	00	06	11		165	00	13	80
	714	00	03	57		1018	00	01	46
कनगाँ	1615	00	05	37	गर्भणा	690	00	19	94
	1616	00	02	07		691	00	02	17
	1618	00	03	21		1816	00	10	92
	1619	00	03	99		689	00	19	54
	1620	00	05	82		686	00	02	45
	1621	00	03	52		688	00	02	27
	1622	00	01	57		687	00	02	61
	1627	00	10	17		685	00	12	70
	1629	00	08	40		684	00	06	59
	1628	00	00	75		675	00	03	23
	1455	00	07	38		676	00	08	79
	1452	00	12	60		674	00	07	92
	1453	00	00	20		1815	00	00	10
	1441	00	00	79		1814	00	04	37
	1443	00	06	22		673	00	06	73
	1442	00	06	60		672	00	06	95
	1414	00	13	26		664	00	00	60
	1831	00	13	46		670	00	17	61
	1412	00	00	10		579	00	10	78
	1413	00	17	02		583	00	07	45
	1793	00	00	11		578	00	09	41
	1404	00	05	19		584	00	04	03
	1403	00	01	93		585	00	01	93
	1047	00	00	61		586	00	00	33
	1046	00	08	44		577	00	13	34
	1027	00	00	94		571	00	14	62
	1028	00	05	74		1790	00	11	62
	1045	00	22	35		568	00	01	47
	1044	00	05	15		33	00	05	95
	1030	00	00	10		34	00	02	38
	1043	00	05	89		35	00	23	10
	1031	00	05	73		30	00	02	62
	1039	00	00	10		29	00	32	58

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
गर्भणा—(जारी)	28	00	00	12	बादिपालि—(जारी)	260	00	07	20
	27	00	09	07		265	00	00	10
	26	00	11	40		268	00	06	41
	24	00	00	31		266	00	00	37
	25	00	06	50		267	00	10	50
	22	00	07	20		188	00	18	58
	7	00	04	95		264	00	14	96
	21	00	00	24	पिपलिपालि	431	00	07	81
	8	00	09	35		433	00	00	53
	17	00	05	56		432	00	07	13
	9	00	06	14		430	00	03	43
	10	00	08	66		424	00	05	22
	11	00	00	10		425	00	00	46
	12	00	05	81		401	00	11	71
बादिपालि	493	00	00	45		419	00	00	10
	490	00	10	63		1	00	02	98
	491	00	03	50		46	00	06	61
	488	00	22	74		47	00	06	30
	487	00	02	14		48	00	30	37
	486	00	37	40		41	00	04	85
	485	00	01	28		51	00	04	15
	135	00	04	68		53	00	03	48
	136	00	44	48		574	00	05	33
	137	00	00	70		57	00	00	14
	138	00	12	98		60	00	07	89
	681	00	00	44		61	00	01	22
	682	00	01	08		626	00	08	64
	683	00	06	52		80	00	05	25
	139	00	12	41		79	00	00	80
	141	00	02	00		78	00	03	30
	146	00	05	32		76	00	03	56
	147	00	06	49		72	00	01	18
	145	00	03	95		627	00	02	47
	144	00	03	91		73	00	03	33
	153	00	00	10	बुडामाल	1498	00	00	73
	154	00	02	79		1499	00	09	80
	208	00	01	45		1816	00	05	68
	205	00	13	08		1503	00	10	94
	206	00	00	75		1502	00	00	78
	259	00	02	07		1504	00	00	84

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
बुडामाल- (जारी)	1505	00	21	82	केन्दमुन्डि- (जारी)	1611	00	16	75
	1658	00	01	57		1609	00	17	50
	1507	00	01	09		1608	00	03	45
	1475	00	00	57		838	00	05	37
	1469	00	03	65		822	00	09	71
	1471	00	01	16		823	00	00	30
	1470	00	01	21		816	00	01	59
	1473	00	01	47		815	00	01	12
	1466	00	02	37		814	00	02	52
	1465	00	04	73		825	00	02	28
	1464	00	01	94		813	00	01	04
	1463	00	06	93		826	00	04	40
	1462	00	11	19		801	00	09	49
	1460	00	09	11		806	00	00	10
	1349	00	01	75		805	00	08	44
	1372	00	05	01		804	00	01	39
	1371	00	00	92		808	00	00	10
	1376	00	05	82		786	00	09	90
	1375	00	04	91		785	00	03	21
	1377	00	09	48		782	00	16	43
	1378	00	02	94		781	00	05	19
	1807	00	10	84		780	00	06	17
	1379	00	00	10		779	00	10	05
	1380	00	07	29		769	00	03	31
	1651	00	00	22		768	00	08	36
	1381	00	08	23		767	00	09	92
	1426	00	12	41		689	00	00	13
	1425	00	07	33		688	00	09	45
	1427	00	21	85		687	00	00	92
	1421	00	03	83		686	00	00	84
केन्दमुन्डि	1679	00	03	72	सोहेला	224	00	06	80
	1662	00	12	89		223	00	15	80
	1663	00	10	35		222	00	00	10
	1664	00	02	65		221	00	13	90
	1665	00	08	75		231	00	04	80
	1667	00	00	98		232	00	00	55
	1668	00	01	55		233	00	14	00
	1656	00	03	57		236	00	00	20
	1615	00	07	30		234	00	22	10

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
सोहेला—(जारी)	2271	00	15	70	डुमेरपालि—(जारी)	269	00	08	75
	2270	00	06	40		268	00	00	88
	2141	00	05	00		266	00	03	59
	197	00	21	40		267	00	00	19
	2244	00	02	75		252	00	17	27
	2298	00	05	90		253	00	05	63
	172	00	06	78		245	00	05	86
	173	00	05	90		246	00	00	10
	156	00	03	20		202	00	25	90
	155	00	05	16		193	00	05	31
	152	00	00	94		201	00	01	45
	154	00	01	18		194	00	00	82
	153	00	03	57		200	00	10	76
	145	00	03	40		199	00	01	47
	113	00	11	86		208	00	00	80
	114	00	00	20		198	00	00	38
	124	00	20	88		209	00	13	72
	119	00	04	07		221	00	00	26
	122	00	00	47		210	00	02	43
	125	00	03	50		59	00	00	99
	126	00	01	51		57	00	15	53
	129	00	02	02		58	00	00	84
	128	00	03	35		56	00	07	95
	130	00	00	20		768	00	14	05
	132	00	01	46		61	00	00	10
	1	00	03	07		49	00	15	10
डुमेरपालि	368	00	09	46		48	00	01	62
	367	00	18	13		50	00	02	40
	366	00	14	90		32	00	00	43
	189	00	04	19		214	00	26	55
	177	00	05	12		26	00	03	38
	178	00	01	40		23	00	16	83
	179	00	10	91	बिरिपालि	2038	00	07	37
	185	00	00	72		2036	00	04	49
	181	00	03	97		2035	00	16	03
	182	00	09	82		2034	00	05	69
	183	00	00	10		2308	00	00	10
	168	00	14	02		2011	00	11	03
	162	00	00	18		2012	00	00	10

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
बिरिपालि—(जारी)	2006	00	00	10	बिरिपालि—(जारी)	1255	00	02	31
	2005	00	11	96		1253	00	03	33
	2014	00	06	73		1254	00	09	22
	2019	00	03	33		939	00	00	72
	2018	00	06	10		940	00	36	87
	2017	00	06	50		941	00	00	43
	2016	00	03	10		944	00	15	38
	1986	00	11	22		954	00	02	28
	1987	00	01	86		953	00	00	10
	1985	00	16	43		946	00	04	17
	1122	00	00	89		952	00	02	59
	1121	00	07	46		948	00	10	03
	1123	00	00	24		950	00	08	86
	1120	00	16	99		949	00	07	70
	1124	00	00	10		1003	00	08	73
	1125	00	04	74		908	00	15	31
	1169	00	01	69		907	00	12	61
	1165	00	16	90		1019	00	01	35
	1164	00	04	15		872	00	54	97
	1187	00	04	71		871	00	00	28
	1188	00	03	48		859	00	02	75
	1189	00	08	84		873	00	06	72
	1225	00	03	28		858	00	01	29
	1226	00	04	56		857	00	27	53
	1224	00	15	58		856	00	07	88
	1278	00	00	24		840	00	00	17
	1277	00	03	78		839	00	00	55
	1281	00	00	18		838	00	13	04
	1276	00	05	54		829	00	02	36
	1283	00	00	30		827	00	04	78
	1282	00	15	69		828	00	00	18
	1284	00	01	83		812	00	12	48
	1285	00	00	10		824	00	00	78
	1286	00	13	91		813	00	03	06
	1263	00	29	50		2196	00	03	50
	1259	00	01	80		806	00	04	50
	1260	00	07	17		807	00	00	10
	1252	00	05	18					
	1251	00	00	10					

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
बिरिपालि—(जारी)	804	00	09	10	अरजुणडा—(जारी)	1825	00	06	26
	2194	00	00	82		1827	00	06	37
	760	00	10	75		1821	00	01	81
	2193	00	01	38		1828	00	00	16
	803	00	00	30		1833	00	00	10
	2191	00	00	63		1840	00	01	70
	801	00	00	15		1834	00	03	50
	784	00	15	72		1835	00	05	10
	762	00	00	24		2441	00	03	30
	763	00	12	50		1829	00	11	84
	785	00	01	60		1838	00	16	37
	782	00	00	70		2262	00	00	35
	786	00	11	65		2200	00	00	10
	2156	00	02	35		1790	00	06	45
अरजुणडा	2158	00	02	70		2264	00	05	20
	2159	00	02	91		2263	00	00	30
	2153	00	12	57		2245	00	02	97
	2154	00	02	86		2345	00	00	48
	2514	00	04	51		1738	00	09	41
	2261	00	02	75		1739	00	04	50
	2144	00	04	02		1741	00	05	25
	2143	00	01	42		1736	00	04	87
	2141	00	03	64		1733	00	03	69
	2140	00	02	77		1734	00	00	65
	2139	00	06	77		1701	00	05	26
	2145	00	02	27		1684	00	11	00
	2146	00	08	61		1682	00	05	74
	2136	00	00	29		2239	00	05	50
	2135	00	02	21		1683	00	00	92
	1813	00	01	17		1687	00	01	17
	2541	00	15	50		1660	00	11	44
	1823	00	06	66		1690	00	00	10
	1817	00	01	46		1691	00	22	20
	1819	00	00	16		2388	00	01	76
	1822	00	06	58		1658	00	02	50

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
अरजुण्डा—(जारी)	1619	00	04	47	पन्डकिपालि—(जारी)	2083	00	02	13
	1618	00	03	71		2099	00	05	20
	1617	00	11	72		2100	00	03	79
	1615	00	14	57		2020	00	20	20
	1629	00	00	26		2022	00	00	60
	1630	00	00	75		2019	00	04	60
	1613	00	00	62		2506	00	00	20
	1631	00	02	59		2018	00	01	60
	1632	00	02	52		2016	00	04	90
	1633	00	05	24		2017	00	00	30
	1611	00	01	59		2015	00	02	50
	1599	00	06	77		2014	00	00	10
	2475	00	09	29		1995	00	27	90
	1597	00	09	80		1996	00	04	80
	1586	00	10	82		1997	00	12	30
	1587	00	00	10		1998	00	00	20
	1584	00	14	86		2337	00	17	10
	2242	00	00	43		1962	00	13	36
	1583	00	06	26		1961	00	05	60
	1582	00	01	28		2970	00	00	10
	1575	00	09	38		1952	00	11	70
पन्डकिपालि	2183	00	12	46		1951	00	00	41
	2067	00	06	91		2983	00	04	02
	2068	00	29	83		2449	00	05	64
	2069	00	00	96		2616	00	05	07
	2070	00	07	81		1939	00	06	98
	2074	00	02	63		1938	00	05	71
	2118	00	00	10		2332	00	00	10
	2117	00	18	37		1935	00	03	65
	2091	00	06	82		2333	00	00	35
	2210	00	04	92		1934	00	11	00
	2095	00	07	28		2141	00	00	13
	2096	00	01	05		1831	00	04	22
	2097	00	00	20		1832	00	14	49
	2098	00	03	54		1833	00	01	37

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
पन्डकिपालि—(जारी)	1850	00	02	56	पन्डकिपालि—(जारी)	2313	00	00	10
	1843	00	24	14		3099	00	00	10
	1839	00	12	25		1272	00	05	60
	1840	00	03	50		2517	00	00	42
	1841	00	00	20		1270	00	04	40
	1884	00	02	88		1268	00	00	59
	1559	00	09	58		1267	00	03	88
	2479	00	01	27		1266	00	27	32
	1562	00	01	09		1242	00	14	89
	1561	00	04	68		1241	00	12	78
	1560	00	22	03		2520	00	01	55
	1574	00	01	05		1240	00	15	89
	2478	00	05	49		1239	00	01	93
	2195	00	00	10		2550	00	00	33
	1579	00	05	59		2734	00	02	09
	1555	00	01	32		2735	00	05	38
	1581	00	21	09		2737	00	00	10
	1440	00	03	68		2549	00	00	38
	1442	00	01	18		1223	00	04	54
	1443	00	20	73		1221	00	06	89
	1290	00	00	52		1222	00	01	72
	1291	00	03	90		1220	00	03	15
	1292	00	00	97		2736	00	00	32
	1293	00	23	37		1219	00	11	83
	2759	00	07	02		1179	00	03	82
	2719	00	00	10		1087	00	17	58
	2720	00	09	69		1088	00	00	69
	2762	00	00	94		1089	00	07	84
	1280	00	00	74		3112	00	04	80
	2761	00	02	07		1084	00	13	79
	2760	00	07	26					
	1281	00	01	81					
	1282	00	02	84					
	2597	00	00	33					
	1283	00	04	02					

[फा. सं. आर-25011/2/2010 ओ.आर-11]

बी. के. दत्ता, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 11th March, 2010

S.O. 862.—Whereas, it appears to the Central Government that it is necessary in the public interest that

for the transporation of petroleum products from Paradip (Orissa) to Raipur (Chhattisgarh) & Ranchi (Jharkhand), "Paradip - New Sambalpur - Raipur - Ranchi Pipeline" should be laid by Indian Oil Corporation Limited;

And whereas, it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land described in the schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said schedule may, within twenty-one days from the date on which the copies of this notification, as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Sri Sukanta Kumar Pradhan, Competent Authority, Indian Oil Corporation Limited, Paradip -New Sambalpur-Raipur-Ranchi Pipeline Project, 1295, Forest Park, Bhubaneswar-751009, (Orissa).

SCHEDULE

Tehsil : Sohela District : Bargarh State : Orissa

Name of the Village	Plot No.	Area		
		Hectare	Are	Sq. mtr.
(1)	(2)	(3)	(4)	(5)
Bisipali	1107	00	45	91
	1083	00	02	80
	1072	00	02	96
	1071	00	02	43
	1070	00	01	23
	1059	00	52	50
	1055	00	14	07
	1053	00	28	76
	158	00	04	55
	157	00	06	13
Nagan	152	00	03	51
	189	00	01	14
	135	00	15	78
	136	00	08	00
	137	00	06	60
	138	00	16	12
	115	00	11	63

(1)	(2)	(3)	(4)	(5)
Nagan-(Cont.)	139	00	00	96
	141	00	07	17
	140	00	03	81
	143	00	04	48
	79	00	09	58
	80	00	06	47
	78	00	15	57
	77	00	10	88
	74	00	04	26
	64	00	02	02
	63	00	03	73
	62	00	01	71
	56	00	13	15
	61	00	00	27
	60	00	04	20
	59	00	05	20
Dumberpali	749	00	02	12
	411	00	07	50
	393	00	09	00
	395	00	24	30
	391	00	01	13
	396	00	00	10
	397	00	07	21
	390	00	00	20
	386	00	01	93
	398	00	05	15
	367	00	02	95
	790	00	02	70
	332	00	00	18
	331	00	04	55
	789	00	05	85
	337	00	16	97
	346	00	01	57
	347	00	00	53
	345	00	03	37
	349	00	00	10
	350	00	12	48
	355	00	01	35
	353	00	06	11
	714	00	03	57

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
Kangan	1615	00	05	37	Garbhana	690	00	19	94
	1616	00	02	07		691	00	02	17
	1618	00	03	21		1816	00	10	92
	1619	00	03	99		689	00	19	54
	1620	00	05	82		686	00	02	45
	1621	00	03	52		688	00	02	27
	1622	00	01	57		687	00	02	61
	1627	00	10	17		685	00	12	70
	1629	00	08	40		684	00	06	59
	1628	00	00	75		675	00	03	23
	1455	00	07	38		676	00	08	79
	1452	00	12	60		674	00	07	92
	1453	00	00	20		1815	00	00	10
	1441	00	00	79		1814	00	04	37
	1443	00	06	22		673	00	06	73
	1442	00	06	60		672	00	06	95
	1414	00	13	26		664	00	00	60
	1831	00	13	46		670	00	17	61
	1412	00	00	10		579	00	10	78
	1413	00	17	02		583	00	07	45
	1793	00	00	11		578	00	09	41
	1404	00	05	19		584	00	04	03
	1403	00	01	93		585	00	01	93
	1047	00	00	61		586	00	00	33
	1046	00	08	44		577	00	13	34
	1027	00	00	94		571	00	14	62
	1028	00	05	74		1790	00	11	62
	1045	00	22	35		568	00	01	47
	1044	00	05	15		33	00	05	95
	1030	00	00	10		34	00	02	38
	1043	00	05	89		35	00	03	10
	1031	00	05	73		30	00	02	62
	1039	00	00	10		29	00	32	58
	1042	00	00	10		28	00	00	12
	1032	00	01	20		27	00	09	07
	1035	00	17	90		26	00	11	40
	1002	00	01	35		24	00	00	31
	1001	00	03	89		25	00	06	50
	165	00	13	80		22	00	07	20
	1018	00	01	46		7	00	01	95

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
Garbhana	21	00	00	24	Piplipali	431	00	07	81
	8	00	09	35		433	00	00	53
	17	00	05	56		432	00	07	13
	9	00	06	14		430	00	03	43
	10	00	08	66		424	00	05	22
	11	00	00	10		425	00	00	46
	12	00	05	81		401	00	11	71
Badipali	493	00	00	45		419	00	00	10
	490	00	10	63		1	00	02	98
	491	00	03	50		46	00	06	61
	488	00	22	74		47	00	06	30
	487	00	02	14		48	00	30	37
	486	00	37	40		41	00	04	85
	485	00	01	28		51	00	04	15
	135	00	04	68		53	00	03	48
	136	00	44	48		574	00	05	33
	137	00	00	70		57	00	00	14
	138	00	12	98		60	00	07	89
	681	00	00	44		61	00	01	22
	682	00	01	08		626	00	08	64
	683	00	06	52		80	00	05	25
	139	00	12	41		79	00	00	80
	141	00	02	00		78	00	03	30
	146	00	05	32		76	00	03	56
	147	00	06	49		72	00	01	18
	145	00	03	95		627	00	02	47
	144	00	03	91		73	00	03	33
	153	00	00	10	Budamal	1498	00	00	73
	154	00	02	79		1499	00	09	80
	208	00	01	45		1816	00	05	68
	205	00	13	08		1503	00	10	94
	206	00	00	75		1502	00	00	78
	259	00	02	07		1504	00	00	84
	260	00	07	20		1505	00	21	82
	265	00	00	10		1658	00	01	57
	268	00	06	41		1507	00	01	09
	266	00	00	37		1475	00	00	57
	267	00	10	50		1469	00	03	65
	188	00	18	58		1471	00	01	16
	264	00	14	96		1470	00	01	21

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
Budamal	1473	00	01	47	Kendmundi	814	00	02	52
	1466	00	02	37		825	00	02	28
	1465	00	04	73		813	00	01	04
	1464	00	01	94		826	00	04	40
	1463	00	06	93		801	00	09	49
	1462	00	11	19		806	00	00	10
	1460	00	09	11		805	00	08	44
	1349	00	01	75		804	00	01	39
	1372	00	05	01		808	00	00	10
	1371	00	00	92		786	00	09	90
	1376	00	05	82		785	00	03	21
	1375	00	04	91		782	00	16	43
	1377	00	09	48		781	00	05	19
	1378	00	02	94		780	00	06	17
	1807	00	10	84		779	00	10	05
	1379	00	00	10		769	00	03	31
	1380	00	07	29		768	00	08	36
	1651	00	00	22		767	00	09	92
	1381	00	08	23		689	00	00	13
	1426	00	12	41		688	00	09	45
Kendmundi	1425	00	07	33	Sohela	687	00	00	92
	1427	00	21	85		686	00	00	84
	1421	00	03	83		224	00	06	80
	1679	00	03	72		223	00	15	80
	1662	00	12	89		222	00	00	10
	1663	00	10	35		221	00	13	90
	1664	00	02	65		231	00	04	80
	1665	00	08	75		232	00	00	55
	1667	00	00	98		233	00	14	00
	1668	00	01	55		236	00	00	20
	1656	00	03	57		234	00	22	10
	1615	00	07	30		2271	00	15	70
	1611	00	16	75		2270	00	06	40
	1609	00	17	50		2141	00	05	00
	1608	00	03	45		197	00	21	40
	838	00	05	37		2244	00	02	75
	822	00	09	71		2298	00	05	90
	823	00	00	30		172	00	06	78
	816	00	01	59		173	00	05	90
	815	00	01	12		156	00	03	20

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
Sohela	155	00	05	16	Dumerpali	201	00	01	45
	152	00	00	94		194	00	00	82
	154	00	01	18		200	00	10	76
	153	00	03	57		199	00	01	47
	145	00	03	40		208	00	00	82
	113	00	11	86		198	00	00	38
	114	00	00	20		209	00	13	72
	124	00	20	88		221	00	00	26
	119	00	04	07		210	00	02	43
	122	00	00	47		59	00	00	99
	125	00	03	50		57	00	15	53
	126	00	01	51		58	00	00	84
	129	00	02	02		56	00	07	95
	128	00	03	35		768	00	14	05
	130	00	00	20		61	00	00	10
	132	00	01	46		49	00	15	10
	1	00	03	07		48	00	01	62
Dumerpali	368	00	09	46		50	00	02	40
	367	00	18	13		32	00	00	43
	366	00	14	90		214	00	26	55
	189	00	04	19		26	00	03	38
	177	00	05	12		23	00	16	83
	178	00	01	40	Birhipali	2038	00	07	37
	179	00	10	91		2036	00	04	49
	185	00	00	72		2035	00	16	03
	181	00	03	97		2034	00	05	69
	182	00	09	82		2308	00	00	10
	183	00	00	10		2011	00	11	03
	168	00	14	02		2012	00	00	10
	162	00	00	18		2006	00	00	10
	269	00	08	75		2005	00	11	96
	268	00	00	88		2014	00	06	73
	266	00	03	59		2019	00	03	33
	267	00	00	19		2018	00	06	10
	252	00	17	27		2017	00	06	50
	253	00	05	63		2016	00	03	10
	245	00	05	86		1986	00	11	22
	246	00	00	10		1987	00	01	86
	202	00	25	90		1985	00	16	43
	193	00	05	31		1122	00	00	89

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
Birhipali	1121	00	07	46	Birhipali	954	00	02	28
	1123	00	00	24		953	00	00	10
	1120	00	16	99		946	00	04	17
	1124	00	00	10		952	00	02	59
	1125	00	04	74		948	00	10	03
	1169	00	01	69		950	00	08	86
	1165	00	16	90		949	00	07	70
	1164	00	04	15		1003	00	08	73
	1187	00	04	71		908	00	15	31
	1188	00	03	48		907	00	12	61
	1189	00	08	84		1019	00	01	35
	1225	00	03	28		872	00	54	97
	1226	00	04	56		871	00	00	28
	1224	00	15	58		859	00	02	75
	1278	00	00	24		873	00	06	72
	1277	00	03	78		858	00	01	29
	1281	00	00	18		857	00	27	53
	1276	00	05	54		856	00	07	88
	1283	00	00	30		840	00	00	17
	1282	00	15	69		839	00	00	55
	1284	00	01	83		838	00	13	04
	1285	00	00	10		829	00	02	36
	1286	00	13	91		827	00	04	78
	1263	00	29	50		828	00	00	18
	1259	00	01	80		812	00	12	48
	1260	00	07	17		824	00	00	78
	1252	00	05	18		813	00	03	06
	1251	00	00	10		2196	00	03	50
	1255	00	02	31		806	00	04	50
	1253	00	03	33		807	00	00	10
	1254	00	09	22		804	00	09	10
	939	00	00	72		2194	00	00	82
	940	00	36	87		760	00	10	75
	941	00	00	43		2193	00	01	38
	944	00	15	38		803	00	00	30

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
Birhipali	2191	00	00	63	Arjunda	1840	00	01	70
	801	00	00	15		1834	00	03	50
	784	00	15	72		1835	00	05	10
	762	00	00	24		2441	00	03	30
	763	00	12	50		1829	00	11	84
	785	00	01	60		1838	00	16	37
	782	00	00	70		2262	00	00	35
	786	00	11	65		2200	00	00	10
Arjunda	2156	00	02	35		1790	00	06	45
	2158	00	02	70		2264	00	05	20
	2159	00	02	91		2263	00	00	30
	2153	00	12	57		2245	00	02	97
	2154	00	02	86		2345	00	00	48
	2514	00	04	51		1738	00	09	41
	2261	00	02	75		1739	00	04	50
	2144	00	04	02		1741	00	05	25
	2143	00	01	42		1736	00	04	87
	2141	00	03	64		1733	00	03	69
	2140	00	02	77		1734	00	00	65
	2139	00	06	77		1701	00	05	26
	2145	00	02	27		1684	00	11	00
	2146	00	08	61		1682	00	05	74
	2136	00	00	29		2239	00	05	50
	2135	00	02	21		1683	00	00	92
	1813	00	01	17		1687	00	01	17
	2541	00	15	50		1660	00	11	44
	1823	00	06	66		1690	00	00	10
	1817	00	01	46		1691	00	22	20
	1819	00	00	16		2388	00	01	76
	1822	00	06	58		1658	00	02	50
	1825	00	06	26		1619	00	04	47
	1827	00	06	37		1618	00	03	71
	1821	00	01	81		1617	00	11	72
	1828	00	00	16		1615	00	14	57
	1833	00	00	10		1629	00	00	26

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
Arjunda	1630	00	00	75	Pandakipali	2019	00	04	60
	1613	00	00	62		2506	00	00	20
	1631	00	02	59		2018	00	01	60
	1632	00	02	52		2016	00	04	90
	1633	00	05	24		2017	00	00	30
	1611	00	01	59		2015	00	02	50
	1599	00	06	77		2014	00	00	10
	2475	00	09	29		1995	00	27	90
	1597	00	09	80		1996	00	04	80
	1586	00	10	82		1997	00	12	30
	1587	00	00	10		1998	00	00	20
	1584	00	14	86		2337	00	17	10
	2242	00	00	43		1962	00	13	36
	1583	00	06	26		1961	00	05	60
	1582	00	01	28		2970	00	00	10
	1575	00	09	38		1952	00	11	70
Pandakipali	2183	00	12	46		1951	00	00	41
	2067	00	06	91		2983	00	04	02
	2068	00	29	83		2449	00	05	64
	2069	00	00	96		2616	00	05	07
	2070	00	07	81		1939	00	06	98
	2074	00	02	63		1938	00	05	71
	2118	00	00	10		2332	00	00	10
	2117	00	18	37		1935	00	03	65
	2091	00	06	82		2333	00	00	35
	2210	00	04	92		1934	00	11	00
	2095	00	07	28		2141	00	00	13
	2096	00	01	05		1831	00	04	22
	2097	00	00	20		1832	00	14	49
	2098	00	03	54		1833	00	01	37
	2083	00	02	13		1850	00	02	56
	2099	00	05	20		1843	00	24	14
	2100	00	03	79		1839	00	12	25
	2020	00	20	20		1840	00	03	50
	2022	00	00	60		1841	00	00	20

(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)
Pandakipali	1884	00	02	88	Pandakipali	1268	00	00	59
	1559	00	09	58		1267	00	03	88
	2479	00	01	27		1266	00	27	32
	1562	00	01	09		1242	00	14	89
	1561	00	04	68		1241	00	12	78
	1560	00	22	03		2520	00	01	55
	1574	00	01	05		1240	00	15	89
	2478	00	05	49		1239	00	01	93
	2195	00	00	10		2550	00	00	33
	1579	00	05	59		2734	00	02	09
	1555	00	01	32		2735	00	05	38
	1581	00	21	09		2737	00	00	16
	1440	00	03	68		2549	00	00	38
	1442	00	01	18		1223	00	04	54
	1443	00	20	73		1221	00	06	89
	1290	00	00	52		1222	00	01	72
	1291	00	03	90		1220	00	03	15
	1292	00	00	97		2736	00	00	32
	1293	00	23	37		1219	00	11	83
	2759	00	07	02		1179	00	03	82
	2719	00	00	10		1087	00	17	58
	2720	00	09	69		1088	00	00	69
	2762	00	00	94		1089	00	07	84
	1280	00	00	74		3112	00	04	80
	2761	00	02	07		1084	00	13	79
	2760	00	07	26					
	1281	00	01	81					
	1282	00	02	84					
	2597	00	00	33					
	1283	00	04	02					
	2313	00	00	10					
	3099	00	00	10					
	1272	00	05	60					
	2517	00	00	42					
	1270	00	04	40					

[F. No. R-25011/2/2010-OR-I]

B. K. DATTA, Under Secy.

नई दिल्ली, 30 मार्च, 2010

का.आ. 863.—भारत सरकार पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में मैसर्स ब्रह्मपुत्र केकर एण्ड पोलिमेर लिमिटेड द्वारा रिच गैस पाइपलाइन दुलियाजान से लेपेटकाटा और लीन गैस पाइपलाइन लेपेटकाटा से दुलियाजान एण्ड सी2+ द्रवित हाई वेपर प्रेशर पाइपलाइन लकवा से लेपेटकाटा (डिब्रूगढ़ खण्ड) बिछाने के लिए उक्त अधिनियम के अधीन संलग्न सूची के स्तम्भ (1) में वर्णित व्यक्ति को स्तम्भ (2)

में वर्णित क्षेत्र में सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए नियुक्त करती है।

अनुसूची

व्यक्ति का नाम और पता	अधिकारिता का क्षेत्र
(1)	(2)
श्री अमिताभ राजखोवा, अतिरिक्त उप कमिश्नर, जिला डिब्रूगढ़ (आसाम)	1. आसाम राज्य जिला डिब्रूगढ़ रिच गैस दुलियाजान से लेपेटकाटा और लीन गैस लेपेटकाटा से दुलियाजान पाइप लाइन बिछाने हेतु 2. आसाम राज्य जिला डिब्रूगढ़ सी2+ द्रवित हाई वेपर प्रेशर पाइपलाइन लकवा से लेपेटकाटा (डिब्रूगढ़ खण्ड) पाइपलाइन बिछाने हेतु

[फा. सं. एल-14014/16/10-जी.पी.]

स्नेह पी. मदान, अवर सचिव

New Delhi, the 30th March, 2010

S. O. 863.—Whereas, in pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Government of India hereby authorizes the person mentioned in column (1) of the schedule given below to perform the functions of the Competent Authority under the said Act for laying of Rich gas (Duliajan-Lapetkata) and Lean Gas (Lapetkata-Duliajan) pipelines and C2+ Liquid High Vapor Pressure pipeline (Dibrugarh Section) from Lakwa to Lapetkata by M/s. Brahmaputra Cracker and Polymer Limited (BCPL) in the area mentioned in column (2) of the said schedule.

SCHEDULE

Name and Address of the person	Area of Jurisdiction
(1)	(2)
Shri Amitabh Rajkhowa ACS (Additional Deputy Commissioner) Dibrugarh (Assam)	1- State of Assam areas falling in Dibrugarh District for laying of Rich gas (Duliajan Lapetkata) and Lean Gas (Lapetkata-Duliajan) pipelines 2- State of Assam areas falling in Dibrugarh District for laying of C2+ Liquid High Vapor Pressure pipeline from Lakwa to Lapetkata

[F. No. L-14014/16/10-GP]

SNEH P. MADAN, Under Secy.

नई दिल्ली, 30 मार्च, 2010

का.आ. 864(अ).—भारत सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में मैसर्स ब्रह्मपुत्र क्रैकर एण्ड पोलिमीर लिमिटेड द्वारा सी2+ द्रवित हाई वेपर प्रेशर पाइपलाइन लकवा से लेपेटकाटा (सिवसागर खण्ड) बिछाने के लिए उक्त अधिनियम के अधीन संलग्न सूची के स्तम्भ (1) में वर्णित व्यक्ति को स्तम्भ (2) में वर्णित क्षेत्र में सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए नियुक्त करती है।

अनुसूची

व्यक्ति का नाम और पता	अधिकारिता का क्षेत्र
(1)	(2)
श्रीमती अनिमा सैकिया, अतिरिक्त उप कमिश्नर, जिला सिवसागर (आसाम)	आसाम राज्य जिला सिवसागर सी2+ द्रवित हाई वेपर प्रेशर पाइपलाइन लकवा से लेपेटकाटा (सिवसागर खण्ड) पाइपलाइन बिछाने हेतु

[फा. सं. एल-14014/18/10-जी.पी.]

स्नेह पी. मदान, अवर सचिव

New Delhi, the 30th March, 2010

S.O. 864.—Whereas, in pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), Government of India hereby authorizes the person mentioned in column (1) of the schedule given below to perform the functions of the Competent Authority under the said Act for laying of C2+ Liquid High Vapor Pressure pipeline (Sivasagar Section) from Lakwa to Lapetkata by M/s. Brahmaputra Cracker and Polymer Limited (BCPL) in the area mentioned in column (2) of the said schedule.

Schedule

Name and Address of the person	Area of Jurisdiction
(1)	(2)
Smt Anima Saikia ACS (Additional Deputy Commissioner) Sivasagar (Assam)	State of Assam areas falling in Sivasagar District for laying of C2+ Liquid High Vapor Pressure pipeline from Lakwa to Lapetkata

[F. No. L-14014/18/10-GP]

SNEH P. MADAN, Under Secy.

नई दिल्ली, 29 मार्च, 2010

का. आ. 865.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उप-धारा (1) के अधीन जारी भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का. आ. 2552 तारीख 17 सितम्बर, 2009 द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट गुजरात राज्य की तहसील धांगध्रा तथा हलवद, जिला सुरेन्द्रनगर की भूमि में, विरमगांम से कांडला ब्रांच पाइपलाइन प्रणाली परियोजना के कार्यान्वयन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा गुजरात राज्य में विरमगांम से कांडला तक तेल के परिवहन के लिए पाइपलाइन बिछाने हेतु उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी;

और उक्त अधिसूचना की प्रतियाँ जनता को तारीख 29 अक्टूबर, 2009 को उपलब्ध करा दी गई थी;

और, सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उप-धारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और, केन्द्रीय सरकार का उक्त रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि इस अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाए;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये यह घोषणा करती है कि इस अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के उपयोग का अधिकार अर्जित किया जाता है;

और केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये यह निदेश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने की बजाय सभी विल्लंगमों से मुक्त होकर इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा ।

अनुसूची

जिला : सुरेन्द्रनगर

राज्य : गुजरात

तहसिल का नाम	गांव का नाम	सर्वे संख्या	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मीटर
1	2	3	4	5	6
ध्रांगध्रा	कंकावटी	86	0	15	29
		87/P2	0	01	11
		87/P1	0	00	10
		85/P1+P2	0	16	71
		84/P1	0	11	67
		89	0	00	10
		83	0	06	38
		90	0	03	45
		91	0	08	54
		82/1	0	15	02
		92	0	07	55
		खुली जगह	0	60	43
		257	0	09	64
		256	0	00	31
		280/1	0	17	72
		280/2	0	17	71
		280/3	0	17	41
		277	0	05	06
		279	0	13	05
		278	0	00	10
		खुली जगह	0	18	98
		526/1/P1	0	23	78
		526/2	0	12	54
		525	0	00	10
		खुली जगह	0	43	43

1	2	3	4	5	6
		473	0	07	98
		474/P1	0	02	32
		523/P2	0	00	10
		506	0	27	53
		507	0	38	15
		14	0	16	71
		509/P3	0	13	61
		510	0	13	26
		13/1	0	23	41
		खुली जगह	0	24	31
		493	0	00	10
		586	0	04	97
		587/P1	0	31	18
		587/P2	0	13	85
		रोड	0	05	24
		594	0	00	10
		589/P1	0	22	30
		590	0	01	25
हलवद	मालनीयाद	रोड	0	00	20
		82/P1	0	01	53
		72	0	04	47
		64	0	25	76
		41/P1	0	12	26
		41/P2	0	12	25
		751	0	30	43
		745	0	00	10
		750/P2	0	00	18
		750/P1	0	00	19
		748	0	01	54
		743	0	13	69

1	2	3	4	5	6
		रोड	0	05	14
		702/P2	0	20	78
		702/P3	0	25	55
		702/P1	0	31	94
		698/P1	0	08	68
		672	0	05	94
		671/P1	0	24	38
		634/P2	0	01	07
		635/P1	0	00	51
		635/P2	0	00	50
		636/P2	0	01	10
		630	0	13	67
		609/P2	0	00	53
		612/P2	0	00	10
		611/P1+P2	0	33	84
		547	0	02	32
		548/P1+P2	0	31	75
		549	0	11	41
		550	0	01	16
		551	0	13	04
		552	0	15	46
		534	0	46	88
		रोड	0	06	31
		535/1/P1	0	02	38
		535/P3	0	02	37
		537/P1	0	07	14
		537/P2	0	07	14
	वेगडवाव	265/P1	0	03	18
	मयुरनगर	खुली जगह	0	01	27
		464	0	17	71

1	2	3	4	5	6
		रोड	0	01	86
		461	0	01	48
		462/P1	0	10	76
		462/P2	0	16	38
		450	0	11	42
		449	0	00	85

[फा.सं. आर.-25011/7/2009-ओ.आर.-1]

बी. के. दत्ता, अवर सचिव

New Delhi, the 29th March, 2010

S. O. 865.— Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 2552 dated 17 September, 2009 issued under sub section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act 1962 (50 of 1962) the Central Government declared its intention to acquire the right of user in the land in Tehsil Dhrangadhra and Halvad, District Surendranagar, in Gujarat State, specified in the schedule appended to that notification for the purpose of laying pipeline for the transportation of Petroleum products from Viramgam to Kandla in the State of Gujarat by the Indian Oil Corporation Limited for implementing the Branch Pipeline from Viramgam to Kandla.

And whereas, copies of the said notification were made available to the public on 29th October, 2009;

And whereas, the Competent Authority has under sub-section (1) of section 6 of the said Act, submitted his report to the Central Government.

And further, whereas the Central Government has after considering the said report, decided to acquire the right of user in the land specified in the Schedule appended to this Notification.

Now, therefore in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the said land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline.

And further, in exercise of the powers conferred by sub-section (4) of section 6, Central Government directs the right of user in the said land shall instead of vesting in the Central Government, vest on date of publication of this declaration, in the Indian Oil Corporation Limited free from all encumbrances.

SCHEDULE**District : Surendranagar****State : Gujarat**

Name of Tahsil	Name of Village	Survey No.	Area		
			Hectare	Are	Sq. Mtr.
1	2	3	4	5	6
DHRANGADHRA	KANKAVATI	86	0	15	29
		87/P2	0	01	11
		87/P1	0	00	10
		85/P1+P2	0	16	71
		84/P1	0	11	67
		89	0	00	10
		83	0	06	38
		90	0	03	45
		91	0	08	54
		82/1	0	15	02
		92	0	07	55
		OPEN LAND	0	60	43
		257	0	09	64
		256	0	00	31
		280/1	0	17	72
		280/2	0	17	71
		280/3	0	17	41
		277	0	05	06
		279	0	13	05
		278	0	00	10
		OPEN LAND	0	18	98
		526/1/P1	0	23	78
		526/2	0	12	54
		525	0	00	10
		OPEN LAND	0	43	43
		473	0	07	98
		474/P1	0	02	32
		523/P2	0	00	10
		506	0	27	53
		507	0	38	15

1	2	3	4	5	6
		14	0	16	71
		509/P3	0	13	61
		510	0	13	26
		13/1	0	23	41
		OPEN LAND	0	24	31
		493	0	00	10
		586	0	04	97
		587/P1	0	31	18
		587/P2	0	13	85
		ROAD	0	05	24
		594	0	00	10
		589/P1	0	22	30
		590	0	01	25
HALVAD	MALNIYAD	ROAD	0	00	20
		82/P1	0	01	53
		72	0	04	47
		64	0	25	76
		41/P1	0	12	26
		41/P2	0	12	25
		751	0	30	43
		745	0	00	10
		750/P2	0	00	18
		750/P1	0	00	19
		748	0	01	54
		743	0	13	69
		ROAD	0	05	14
		702/P2	0	20	78
		702/P3	0	25	55
		702/P1	0	31	94
		698/P1	0	08	68
		672	0	05	94
		671/P1	0	24	38
		634/P2	0	01	07
		635/P1	0	00	51

1	2	3	4	5	6
		635/P2	0	00	50
		636/P2	0	01	10
		630	0	13	67
		609/P2	0	00	53
		612/P2	0	00	10
		611/P1+P2	0	33	84
		547	0	02	32
		548/P1+P2	0	31	75
		549	0	11	41
		550	0	01	16
		551	0	13	04
		552	0	15	46
		534	0	46	88
		ROAD	0	06	31
		535/1/P1	0	02	38
		535/P3	0	02	37
		537/P1	0	07	14
		537/P2	0	07	14
	VEGADVAV	265/P1	0	03	18
	MAYURNAGAR	OPEN LAND	0	01	27
		464	0	17	71
		ROAD	0	01	86
		461	0	01	48
		462/P1	0	10	76
		462/P2	0	16	38
		450	0	11	42
		449	0	00	85

[F. No. R-25011/7/2009-O.R.-I]

B. K. DATTA, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 4 मार्च, 2010

का.आ. 866.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सी.सी. एल. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, धनबाद के पंचाट (शिकायत सं. 1/2005 संदर्भ सं. 88/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-3-10 को प्राप्त हुआ था।

[सं. एल-20025/8/2010-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 4th March, 2010

S. O. 866.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Complaint No. 1/2005 Ref. No. 88/1997) of the Central Government Industrial Tribunal/Labour Court No.1, Dhanbad now as shown in the Annexure in Industrial Dispute between the employers in relation to the management of M/s. C.C.L. and their workman, which was received by the Central Government on 4-3-10.

[No. L-20025/8/2010-IR(C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. I, DHANBAD**

In the matter of an Application U/s. 33A of the I.D. Act.

Complaint No. 1 of 2005**(Arising out of Reference No. 88 of 1997)****Parties :**

Khiredhar Mahto, Explosive Career,
Swang Colliery of M/s. C.C. Ltd.
P.O. Swang, Dist. Bokaro

.... Complainant

Vrs.

1. The Chairman-Cum-Managing Director,
M/s. C.C. Ltd. Darbhanga House,
At & P.O. Ranchi.
2. The Project Officer, Swang Colliery,
M/s. C.C. Ltd. P.O. Swang, Dist. Bokaro.

.... Opp. Party/Management.

Present : Shri H.M. Singh, Presiding Officer**Appearances :**

For the Complainant : Shri G. Prasad, Advocate.

For the Opp. Party : None

State : Jharkhand Industry : Coal

Dated, the 6th January, 2008

AWARD

On 23-12-2008 a petition under the signature of the concerned workman has been filed stating therein that the petitioner/workman does not want to proceed with the case and as such the same may be dropped and the management may be directed to clear all the dues of petitioner.

2. In view of the above prayer, the Complaint case No. 1 of 2005 is dropped and the Opp. Party/Management is directed to clear all dues of the petitioner.

H. M. SINGH, Presiding Officer

नई दिल्ली, 5 मार्च, 2010

का.आ. 867.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 91/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-03-2010 को प्राप्त हुआ था।

[सं. एल-12012/179/2000-आईआर(बी-11)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 5th March, 2010

S. O. 867.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 91/2001) of the Central Government Industrial Tribunal/Labour Court I, Chandigarh now as shown in the Annexure in Industrial Dispute between the employees in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 04-03-2010.

[No. L-12012/179/2000-IR(B-II)]

U.S. PANDEY, Desk Officer

ANNEXURE**BEFORE SHRI GYANENDRA KUMAR SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH****Case ID No. 91/2001**

Shri Rohit Kumar, S/o Shri Prem Chand, C/o Shri B.S. Gill,
House No. 3296, Sector-19-D, Chandigarh-160017.

..... Applicant

Versus

The Regional Manager, Bank of Baroda, Regional Office,
Karnal-132001

.....Respondent

APPEARANCES

For the Workman : Shri Sandeep Bhardwaj

For the Management : Shri Parmod Jain

AWARD

Passed on : 22-2-2010

Government of India vide Notification no. L-12012/179/2000-IR (B-II), dated 22-03-2001, by exercising its powers under Section 10 of the Industrial Disputes Act, (the Act in short) has referred the following industrial dispute for adjudication to this Tribunal :—

“Whether the action of the Regional Manager, Bank of Baroda, Karnal in terminating the services of Shri Rohit Kumar S/o Shri Prem Chand w.e.f. 28-07-1999 is just and legal? If not, what relief the workman is entitled to?”

After receiving the reference parties were informed. Parties appeared and filed their respective pleadings. In his pleadings the workman has mentioned that he was appointed as peon by the bank in the year 1997. He worked in the bank from 15-02-1997 to 28-07-99. His services were terminated by the bank without issuing him any notice or without paying one month wages in lieu of notice and without any terminal dues. On the basis of the above the workman has challenged his termination order being illegal and void as the same is against the provisions of the Act. The workman has prayed for an order of reinstatement into the services with consequential benefits.

The management denied the contention of the workman that workman has worked from 15-02-97 to 28-07-99. It is the contention of the management that workman has interminently worked with the management as daily wagger. He has not completed 240 days of work in the preceding year from the date of his termination, hence he is not entitled for any relief in his reference.

Parties were afforded the opportunity for adducing evidence. Shri Rohit Kumar, the workman filed his affidavit and his cross-examination was recorded on 22-10-08. Likewise, Shri S.K. Shimmar filed his affidavit on behalf of the management and he was cross-examined by learned counsel for the workman on 25-03-09. Parties were heard at length. I have also perused entire materials on record filed by the workman. Instead of summoning the records the management failed to file any document.

At one place the opening line of the cross-examination of the management witness Shri S.K. Shimmar is that workman has not worked at all with the bank. But in his next sentence he has voluntarily stated that workman has worked interminently. The bank has no record for the work interminently done by any workman. On the contention that workman use to enter the entries in the documents prepared by Daftri, the witness denied any such entry. It is admitted by the witness of the management that workman was paid as casual daily waged worker but no record was maintained by the bank. It is also admitted in the second last para that no notice or retrenchment compensation was given to the workman as he was as casual worker.

The workman has filed certain documents which, no doubt, are not the evidence regarding the total working

days of the workman but are sufficient to prove that workman was working as casual labour with the bank. This fact is also admitted by the witness of the management that workman was paid as casual waged worker. Learned counsel for the management has argued that it is the duty of the workman to prove he had worked 240 days continuously with the management. The workman has utterly failed to prove that he has worked 240 days or more with the management, hence, he is not entitled for any relief.

It is the settled law of service jurisprudence that workman has to prove that he had worked for 240 days or more with the management in the preceding year from the date of his termination. But the manner and the method of proving this issue has to be taken into consideration by the Tribunal. The workman can prove by summoning the relevant records from the bank. The workman has summoned the record but the management decline to file any record on the illegal pretext that no record was maintained by the bank. Bank is a financial institution in which every transaction relating to the finance (receipt or payment) is mandatory to be written in writing. It is admitted that payment was made good to the workman as casual worker. I am unable to understand that how the payment was made good without maintaining any register. It is clear that the bank has deliberately hold the record to prevent the workman for exercising his lawful rights under the provisions of the Act.

At the cost of the repetition, it is mentioned that there is a difference of proving the fact and manner of proving that same. Workman was bound to prove the fact that he has completed 240 days of work as daily waged worker in the preceding year from the date of this termination but he has opted a particular manner to prove this fact and issue. The particular manner was summoning the documents which were lying in the custody of the management. No documents regarding the services of workman with the management are supposed to lie with the workman. These are the documents of the management of the bank and are necessarily in the custody of the bank. The bank refused to file the documents on the illegal pretext that no record was maintained. Thus, as per the settled principle of service jurisprudence adverse inference for non filing and providing with relevant record shall be taken against the management. Now, the question before this Tribunal is what should be the nature of adverse inference? Undoubtedly, the nature of adverse inference will be that affidavit and the contentions mentioned in the affidavit filed by the workman regarding the tenure of his work shall be considered to be true. Thus, on this pretext there is no hesitation for this Tribunal to hold that workman has completed 240 days of work in the preceding year from the date of his termination.

It is also the contention of the management that there is no requirement for termination of the workman who is working as casual daily waged worker. The provisions of the Act also protects the right of work of a daily waged worker. It is hereby made clear that there is a difference between the protection of right to work and

regularization of services. The issue before this Tribunal is not the regularization of the services of the workman but the protection of his right to work on the position he was initially appointed or engaged. It is not disputed before this Tribunal that initial engagement or appointment of the workman with management was not lawful. It is also not disputed that documents relating to the services and the payment made to the workman and to be maintained by the bank in ordinary course of nature have not been filed. It is illegal contention of the bank that the bank has not maintained any record of casual daily waged worker.

Accordingly, it was a right of the workman to get protection for right to work under the provisions of the Act. The provisions of the Act never barred the termination of the workman but regulate it. The termination is regulated in the way that it has to be succeeded by a notice or one month wages in lieu of notice with lawful terminal dues. It has not been done in this case. It has been admitted by the management that no notice or one month wages in lieu of notice or retrenchment compensation was given to the workman which make the termination of the workman void and illegal being against the provisions of the Act.

Whenever, the termination of any workman is declared to be null and void, there are two possible remedies available to the workman. The first remedy is reinstatement of the workman into the services on the same position he was initially appointed and working with the bank. The second alternative remedy is a reasonable compensation. It is the settled law of service jurisprudence that priority should be given for reinstatement of the workman into the service and in exceptional cases, the Tribunal should remedied the workman with the compensation. When it is before the Tribunal that work is not available with the management or no post is lying vacant, the workman should be reasonably compensated. On going through the entire materials on record, it is clear that no work at present is available with the bank. Accordingly, reasonable compensation is the appropriate remedy for the workman. The compensation should be awarded on the basis of reasonable criteria. The facts to be considered as a reasonable criteria are the wages which the workman was getting at the time of the termination, one month wages in lieu of notice, lawful terminal dues, interest thereon, depreciation in the money, inflation and index cost factor. The period for which workman has worked with the management is also an important factor to consider. Considering all the above factors, I am of the view that an amount of Rs. 1,00,000 (one lakh only) will be the appropriate and reasonable compensation to be awarded to the workman. Accordingly, the management of respondent is directed to pay the workman an amount of Rs. 1,00,000 (one lakh only) as compensation on account of his illegal termination. The management is directed to deposit/pay the said amount within one month from the date of publication of the award. It is hereby made clear that if the management pay/deposits the amount within one month from the date of publication of this award, no interest need to be paid, failing which the workman will

also be entitled for an interest at the rate of 8 per cent per annum from the date of filing the claim petition till final payment. Central Government be approached for publication of award, and thereafter, file be consigned to record room.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 5 मार्च, 2010

का.आ. 868.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं.-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 311/2001 और 53/2003, 55/2003, 89/2003, 129/2003, 161/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-03-2010 को प्राप्त हुआ था।

[सं. एल-12012/132/2001-आई.आर.(बी. II)] 311/2001]

[सं. एल-12012/182/2002-आई.आर.(बी. II)] 53/2003]

[सं. एल-12012/181/2002-आई.आर.(बी. II)] 55/2003]

[सं. एल-12012/195/2002-आई.आर.(बी. II)] 89/2003]

[सं. एल-12012/33/2003-आई.आर.(बी. II)] 129/2003]

[सं. एल-12012/77/2003-आई.आर.(बी. II)] 161/2003]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 5th March, 2010

S.O. 868.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 311/2001 and 53/2003, 55/2003, 89/2003, 129/2003, 161/2003) of the Central Government Industrial Tribunal/Labour Court No.1, Chandigarh now as shown in the Annexure in Industrial Dispute between the employers in relation to the management of Punjab and Sind Bank and their workman, which was received by the Central Government on 04-03-2010.

[No. L-12012/132/2001-IR (B-II)] 311/2001]

[No. L-12012/182/2002-IR (B-II)] 53/2003]

[No. L-12012/181/2002-IR (B-II)] 55/2003]

[No. L-12012/195/2002-IR (B-II)] 89/2003]

[No. L-12012/33/2003-IR (B-II)] 129/2003]

[No. L-12012/77/2003-IR (B-II)] 161/2003]

U. S. PANDEY, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I, CHANDIGARH.**

**Case ID No. 311/2001, 53/2003, 55/2003, 89/2003,
129/2003, 161/2003.**

- (1) Shri Roshan Lal, S/o Shri Pritam Lal R/o 2 Golden Avenue, Garha Road, Jalandhar (Punjab)-144001.
- (2) Shri Deepak Verma, S/o Shri Tilak Ram, R/o Chandigarh Club, Sector-1, Chandigarh-160001.

- (3) Shri Bobby, 201, Milk Colony, Village Dhanas, U.T. Chandigarh.
- (4) Shri Trilok Singh, S/o Shri Jaman Singh, H.No 412, Pipli Wala Town, Mani Majra, Chandigarh.
- (5) Shri Ram Baran Maurya, S/o Shri Binha Din Maurya, H.No. 49, Power Colony, Type-I, Anandpur Sahib, Ropar (Punjab).
- (6) Shri Ganesh Singh, S/o Shri Jaman Singh, 89 A, Sector-16, Chandigarh-160015.

...Applicants

Versus

The Zonal Manager, Punjab & Sind Bank, Model Town Jalandhar (Punjab)-144001.

...Respondent

APPEARANCES

For the Workman : Shri R.K.Singh,
Shri M.P.S. Maan.

For the Management : Shri J.S. Sathi.

AWARD

Passed on : 22-2-2010 .

This award shall adjudicate and answer six references which are as follows:—

- (1) I. D. No. 311/2001, Ref. No. L-12012/132/2001-IR(B-II), dated 26-10-2001 Shri Roshan Lal Vs. Punjab & Sind Bank.
- (2) I. D. No. 53/20.03, Ref. No. L-12012/182/2002-IR(B-II), dated 24-02-03, Shri Deepak Verma Vs. Punjab and Sind Bank.
- (3) I.D. No.89/2003, Ref. No. L-12012/195/2002-IR(B-II), dated 16-04-2003, Shri Trilok Singh Vs. Punjab and Sind Bank.
- (4) I. D. No. 55/2003, Ref. No. L-12012/181/2002-IR(B-II), dated 24-02-03, Shri Bobby Vs. Punjab and Sind Bank.
- (5) I. D. No. 129/2003, Ref. No. L-12012/33/2003-IR(B-II), dated 9-6-2003, Shri Ram Baran Maurya Vs. Punjab and Sind Bank.
- (6) I.D. No.161/2003, Ref. No. L-12012/77/2003-IR(B-II), dated 11-9-03, Shri Ganesh Singh Vs. Punjab and Sind Bank.

In all these industrial disputes the references referred by the Central Government are as follows:—

(1) Whether the action of the management of Punjab and Sind Bank in terminating the services of Shri Roshan Lal S/o Shri Pritam Lal is just and legal? If not, what relief the workman is entitled to and from which date?"

(2) Whether the action of the management of Punjab and Sind Bank in terminating the services of Shri Deepak Verma S/o Shri Tilak Ram, Ex-Peon (Daily Wage Basis) w.e.f. 29-12-2001 without any notice and without any payment of retrenchment compensation is just and legal?

If not, what relief the concerned workman is entitled to and from which date?"

(3) Whether the action of the management of Punjab and Sind Bank in terminating the services of Shri Trilok Singh, Ex-peon (Daily wage Basis) w.e.f. 1-1-2002 without any notice and without any payment of retrenchment compensation in violation of statutory provisions of Section 25-F of the I. D. Act, 1947 is just and legal? If not, what relief the concerned workman is entitled to and from which date?"

(4) Whether the action of the management of Punjab and Sind Bank in terminating the services of Shri Bobby S/o Late Shri Lahori Ram, Ex-Peon (Daily Wage Basis) w.e.f. 11-01-2002 without any notice and without any payment of retrenchment compensation is just and legal? If not, what relief the concerned workman is entitled to and from which date?"

(5) Whether the action of the management of Punjab and Sind Bank in terminating the services of Shri Ram Baran Maurya S/o Shri Binha Din Maurya, Ex-Peon (Daily Wage Basis) w.e.f. 1-1-2002 without any notice and without any payment of retrenchment compensation is just and legal? If not, what relief the concerned workman is entitled to and from which date?"

(6) Whether the action of the management of Punjab and Sind Bank in terminating the services of Shri Ganesh Singh S/o Shri Jaman Singh Ex-Peon (Daily Wage Basis) w.e.f. 16-01-2002 without any notice and without any payment of retrenchment compensation etc. in violation of the statutory provisions of Section 25- F, G and H is legal and just? If not, what relief the concerned workman is entitled to and from which date?"

Common questions of law and facts are involved in all the references, hence, for ends of justice all the references are adjudicated and answered by this single award. In I.D. No. 311/2001, Shri Roshan Lal Vs. Punjab and Sind Bank, it is the contention of the workman that he had worked with the bank from the year 1992 to September 2000 as daily waged peon/mazdoor and has completed 240 days of work in the preceding year from the date of his termination. No notice or one month wages in lieu of notice and lawful retrenchment compensation was paid to him before terminating his services.

In I.D. No. 53/2003, Shri Deepak Verma Vs. Punjab and Sind Bank, it is the contention of the workman that he had worked with the management of Punjab and Sind Bank from July 1997 to 29-12-01. He has completed 240 days of work in the preceding year from the date of his termination and his services were terminated without notice or one month wages in lieu of notice and lawful retrenchment compensation.

In I.D. No. 55/2003, Shri Bobby Vs. Punjab and Sind Bank, it is the contention of the workman that he was appointed as Peon against permanent vacancy on full pay scale of Peon on 28-1-97. He worked with the management of Punjab and Sind Bank up to 11-01-02. His services were

terminated without notice or one month wages in lieu of notice and retrenchment compensation even though he has completed 240 days of work in the preceding year from the date of his termination.

In I.D. No.89/2003 Shri Trilok Singh vs. Punjab and Sind Bank, it is the contention of the workman that he was appointed on 21-12-95 against the regular vacancy as a peon on full salary available to peon. He had worked up to 31-12-01 when his services were illegally terminated without notice or wages in lieu of notice and retrenchment compensation.

In I.D. No. 129/2003 Shri Ram Baran Maurya Vs. Punjab and Sind Bank, it is the contention of the workman that he was also appointed as permanent vacancy on regular pay scale available to peon on 18-03-96. He worked with the management up to 2-6-97. He has completed 240 days of work in the preceding year from the date of his termination. His services were illegally terminated without notice or one month wages in lieu of notice and retrenchment compensation. Likewise, in I.D. No. 161/03 Shri Ganesh Singh Vs. Punjab and Sind Bank, it is the contention of the workman that he was appointed on his application by the management of the bank against the regular vacancy of peon on the regular pay-scale of the peon and worked with the management up to July 2002. He has completed 240 days of work with the management of Punjab and Sind Bank. His services were terminated without notice or one month wages in lieu of notice and lawful terminal dues.

On the basis of the above contentions of the workmen have prayed for setting aside their termination orders, being against the provisions of the Industrial Disputes Act (the Act in short) and for the consequential orders for their reinstatement into services with consequential benefits.

The management appeared in all the references and contested the claim of every workman by filing separate and independent written statement. The management has taken plea in all the references that initial appointment of any of the workman was not lawful. There is a lawful procedure for appointment of class IV employee in the bank and the procedure in case of these workmen was not adopted. It is also denied by the management that any of the workmen has completed 240 days of work in the preceding year from the date of his termination. It is further contended by the management of the bank that considering the abnormal strength of workman, voluntarily retirement scheme was launched by the Punjab and Sind Bank. Number of employees have taken benefit of that scheme. Instead of it the staff is in surplus and there is no vacancy for class IV employees. I have gone through all the materials on record. Parties were heard at length. I have also perused the documents filed by the parties and the materials on record. No doubt, the management has contested and challenged the issue of completion of 240 days by every workman with the management of Punjab and Sind Bank in the preceding year from the date of their termination, but the documents and the certificates filed

by the workmen clearly establish the fact that every workman has completed 240 days of work in the preceding year from the date of his termination. In the case of Shri Roshan Lal and Shri Deepak Verma, it is the common admitted plea of both of the parties that they were working as daily waged worker/mazdoor, but in the case of Shri Bobby, Shri Trilok Singh, Shri Ram Baran and Shri Ganesh Singh, it is the contention of every workmen that they were appointed against permanent vacancy and (were getting) the pay scale available to the peon. Every workman was cross-examined in this Tribunal. In their cross-examination every workman namely Shri Bobby, Shri Trilok Singh, Shri Ram Baran and Shri Ganesh have stated that they were not given any appointed letter. They were not issued any termination letter. They have not applied for any post advertised by the management of the bank. Shri Ganesh Singh in his cross-examination has stated that he moved an application for his appointment and he was appointed on the basis of his application. But it is also in the statement of the workman that no interview was held and no appointment letter was given to him. Shri Ganesh Singh has failed to file the copy of such application which he has said to move for his appointment. For appointment against the permanent post there are set of departmental rules and the appointment made in violation of such rules cannot be considered to be a valid appointment against permanent vacancy. Thus, just on the fact that every workman was getting the wages equal to the pay scale available to the post of peon in the bank, does not confer any right upon the workman to become a regular peon of the bank. But for all purposes they were temporarily appointed by the management of the bank in exigency of the work. The witness of the management has specifically stated in his cross examination that for exigency of work the bank can and is even presently appointing daily wagers and temporary employees. Thus, for all purposes of the workmen were casual/temporary employees of the bank and were not appointed against permanent vacancy.

The management has mentioned in paragraph a Hon'ble the Apex Court in written statement. In this paragraph which is the part of the pleadings, no doubt which should not have been, it is mentioned by the Hon'ble Apex Court that the appointment made against rules of the department are illegal and for such appointment the services of the workman cannot be regularized. In this regard, it will be proper to mention that issue before the Tribunal is not regarding the regularization of the services of the workmen. Every workman has come before this Tribunal for the illegality of their termination order. As stated earlier, the witness of the management has asserted and stated that even today in the exigency of work persons are appointed on daily wages and on temporary basis. Thus, the initial appointment/engagement of the workman was not illegal. It was in the exigency of work that these workmen were engaged on daily wage basis temporarily in which mode of payment was monthly. Industrial Disputes Act also protects the interest of such workmen. It is hereby made clear that termination of any

daily waged worker or temporary employee is not barred but it is regulated by the provisions of the Act. It is regulated in the way that it should be succeeded by a notice of retrenchment or one month wages in lieu of notice along with lawful terminal dues. If it is not done the termination of a daily waged worker and temporary employees shall be void being against the provisions of the Act. Thus, the provisions of the Act which creates legal embargo for the purpose of the protection of right to work on the workman. Their services could have been terminated by removing that legal embargo; meaning thereby, by giving a month notice or one month wages in lieu of notice and lawful terminal dues.

Thus, it is clearly established in all the references that every workman was lawfully engaged as a daily waged worker/temporary employee in exigency of the work in the bank. Every workman has completed 240 days of work in the preceding year from the date of his termination. No notice or one month wages in lieu of notice and retrenchment compensation was paid to any of the workman before termination. This renders the termination of every workman illegal and void being against the provisions of the Act.

Whenever, the termination of any workman is declared to be null and void, there are two possible remedies available to the workman. The first remedy is reinstatement of the workman into the services on the same position he was initially appointed and working with the bank. The second alternative remedy is a reasonable compensation. It is the settled law of service jurisprudence that priority should be given for reinstatement of the workman into the service and in exceptional cases, the Tribunal should remedied the workman with the compensation. When it is before the Tribunal that work is not available with the management or no post is lying vacant, the workman should be reasonably compensated. On going through entire materials on record, it is clear that no work at present is available with the bank. It is clearly stated by the management that even after adopting the voluntary retirement scheme by several class IV employees, class IV employees in the Bank are in surplus. Accordingly, reasonable compensation is the appropriate remedy for the workman. The compensation should be awarded on the basis of reasonable criteria. The facts to be considered as a reasonable criteria are the wages which the workman was getting at the time of the termination, one month wages in lieu of notice, lawful terminal dues, interest thereon, depreciation in the money, inflation and index cost factor. The period for which workmen has worked with the management is also an important factor for calculation of reasonable compensation. Considering the above factors and length of service of every workman, I am of the view that following compensation of every workman shall be a reasonable compensation to meet the ends of justice. In I.D. No. 311/2001 Shri Roshan Lal. Rs. 1,75,000, In I.D. No. 53/2003 Shri Deepak Verma. Rs. 1,25,000, in I.D. No. 55/2003, Bobby Rs. 1,75,000, in I.D. No. 89/2003 Trilok

Singh Rs. 2,00,000, in I.D. No. 129/2003, Ram Baran Rs. 1,00,000 and in I.D. No. 161/2003 Ganesh Rs. 2,50,000.

Considering all above factors and the period the workman have worked with the management and the wages they withdraw at the time of their retrenchment the above mentioned compensation is in my view is a reasonable compensation. Accordingly the management of the respondent bank is directed to pay/deposit the above mentioned compensation within one month from the date of publication of award. If the management pays/deposits the amount attributed to each workman within one month from the date of publication of award, no interest need to be paid, failing which every workman shall also be entitled for an interest at the rate of 8 per cent per annum on the amount attributed to every workman from the date of filing the statement of claim till final payment. Accordingly all the references are answered. Let Central Government be approached for publication of award and thereafter, file be consigned to record room.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 5 मार्च, 2010

का.अ. 869.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण भावनगर के पंचाट (संदर्भ संख्या आई.टी.सी. (संख्या) पुराना 108/1998, आई. टी.सी. (संख्या) नया 12/2009 को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-03-2010) को प्राप्त हुआ था।

[सं. एल-12012/60/98-आईआर(बी-11)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 5th March, 2010

S. O. 869.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. ITC (Old) No. 108/1998, ITC (New) No. 12/2009 of the Industrial Tribunal, Bhavnagar now as shown in the Annexure in Industrial Dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 04-03-2010.

[No. L-12012/60/98-IR(B-II)]

U. S. PANDEY, Desk Officer

ANNEXURE

BEFORE SHREE S. S. PANCHAL, INDUSTRIAL
TRIBUNAL, CENTRAL, BHAVANAGAR.

Reference I. T. C. (NEW) No. 12 of 2009

Reference I. T. C. (Old) No. 108 of 1998

First Party	:	The Regional Manager, Dena Bank, Regional Office, Lokhand Bazar, Bhavnagar.
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V/s.

Second Party : It's Workman Mr. N. B. Oza,
Daxini Society, Maninagar,
Ahmedabad,

Appearances :
Mr. Sharad P. Rana, Advocate for the First Party,
Mr. K. H. Patil advocate for the Second Party.

AWARD

1. This Reference was referred to the Industrial Tribunal, Central, Ahmedabad for the adjudication, by the Government of India/Bharat Sarkar, Ministry of Labour/ Shram Mantralaya, New Delhi, vide its Office Order No. L-12012/60/98- IR (B-2) dated: 04-12-1998. But later, order below Civil Application No. 2024/2009 dated: 03-09-2009 passed by the Hon'ble High Court of Gujarat, this Reference has been transferred to this Tribunal. The schedule of the dispute is as under:

"Whether the action of the management of Dena Bank in terminating the services of Shri N. B. Oza vide order dated: 06-07-1996 is legal and justified? If not, what relief the said workman is entitled to?"

2. In the present case first party Regional Manager, Dena Bank, Bhavnagar will be referred as a "first party", while concerned workman Mr. N.B. Oza will be referred as a "second party concerned workman." After filling the present reference case, the second party concerned workman had not remain present before the Tribunal and therefore the present case was dismissed due to absence of the second party concerned workman by the Industrial Tribunal, Central Ahmedabad. Due to dissatisfaction with the said order the second party concerned workman had filed Miscellaneous Application I.T. C. No. 05 of 2000 before the Industrial Tribunal, Central Ahmedabad. In the said Miscellaneous Application I.T. C. No. 05 of 2000 the Industrial Tribunal, Central Ahmedabad, had quashed and set-aside the order passed by the Industrial Tribunal, Central, Ahmedabad, and the present Reference case was restored.

3. After that the second party concerned workman has filed his statement of claim vide Ex-8 and has represented to this Tribunal that Second Party concerned workman was working as a clerk since 1977, and was appointed according to the Rules and Regulation prevailed during the relevant time. Concerned workman was serving in the Bank sincerely and honestly. During his service he had been given first time charge-sheet dated 25-04-1994. He had been charged for the misappropriation of Rs. 10,000/-. During his duties he had to work as a clerk and had to do innumerable cash entries in the banking business. He had to do cash and debit entries everyday during his office time. The said charge was very old. He had not been given necessary documentary evidence to explain charge put on him after that the departmental inquiry was held against the concerned workman. The inquiry authority had come to the conclusion that concerned workman had made misappropriation of bank's funds,

committed fraud on the bank, cheated and concerned workman had lost the trust of the bank. After the aforesaid conclusion the concerned workman was informed to explain the charge was put on him. The second party concerned workman had requested to make representation before the appropriate authority. Even though, the concerned workman was dismissed from his duties. Due to dissatisfaction with the decision of the inquiry officer, the concerned workman has filed an appeal against the said order, but the said his appeal was rejected and the order of the dismissal was not changed by the appellate authority. The second party concerned workman further says in his statement of claim that he had not misappropriated the said amount. During his entire service he has never misappropriated. The said complaint for the misappropriation was done by mistake and by misunderstanding. The complaint filed by the account holder was withdrawn during the departmental inquiry. Hence, the charge put on him for the misappropriation was not survived against him. Thus, the aforesaid order to the dismissal is liable to be illegal, malafid and unjustified in the eyes of law and therefore the action of the management of Dena Bank in terminating the services of Shri N.B. Oza vide order dated: 06-07-1996 is illegal and unjustified, and therefore the said order of the management should be set-aside. In the above-mentioned facts and circumstances of the case, the second party workman has prayed that, the first party, may be directed to reinstate the second party workman on his original post with full back wages and continuity of service and with all consequential benefits in the interest of justice.

4. In reply of the Statement of the Claim, the First party has submitted his reply vide Ex- 17 and submitted that, this Tribunal has no right to rule the present Reference case. First party has denied all the facts shown in the Statement of Claim, and further represented that, on 27-10-1993, while working as a clerk at Kodinar Branch, concerned workman has accepted a bearer cheque No. 1949532 dated: 27-10-1993 for Rs. 10,000/- from Shri Ashok Kumar L. Ganesh, account holder of S. B. A/c. No. 10241 and the said cheque was issued from S. B. A/c. No. 7820 for crediting in S. B. A/c. No. 10241 of Shri Ashok Kumar Ganesh. From the records, it was observed that no such credit of Rs. 10,000 was given in the S. B. A/c. No. 10241 either on 27-10-1993 or thereafter. Not only that, concerned workman had not credited the amount of Rs. 10,000 in the S. B. A/c. and made the credit entry on 27-10-1993 in the passbook of the account holder. Further concerned workman was charged that, he had encashed the cheque and had fraudulently received the amount. After that, the said amount of Rs. 10,000 was refunded by the concerned workman to the account holder when the matter was brought to the notice of the Branch by the account holder. Thus, the concerned workman had instead of crediting the cheque in question to the S.B. A/c. of the complaint the concerned workman had fraudulently withdrawn the amount from the account No. 7820. Therefore the concerned workman was advised to submit his explanation

in writing. After getting the explanation of the concerned workman the first party had started the departmental inquiry against the concerned workman. During the departmental inquiry concerned workman had been given chance to prove him innocent. After the careful consideration the disciplinary authority had come to the conclusion that the concerned workman should be dismissed from his service. Against the said order of the punishment the concerned workman had filed departmental appeal against the appellate authority but the same was rejected by the appellate authority. The order for the dismissal of concerned workman is thus legal, fair and proper in the eyes of the law. Hence, the present Reference is liable to be rejected with the cost.

5. Vide presenting Ex. 9 the second party concerned workman had requested to this Tribunal to order the first party to produce the documentary evidence asked in the said Exhibit and on the said request letter this Tribunal ordered to the first party to reply or comply. The oral evidence of the second party concerned workman has been taken vide Ex. 15. The second party workman has produced its closing purses on 20-12-2004. In the present case the second party concerned workman has represented vide Ex. 19, that second party is not challenging the legality of the inquiry without prejudice to challenge the legality of the charge sheet and perversity of findings of Inquiry Officer.

6. The first party has submitted its documentary evidence i.e. the papers of the departmental inquiry vide Ex. 20 to 52. The first party has produced its closing purses vide Ex. 55.

7. The second party concerned workman has produced their written argument vide Ex. 53 and the first party has produced their written argument vide Wx. 56. Both the written arguments made by the parties have been taken into the consideration.

8. After taking into the consideration the written arguments of the both the parties this Tribunal has to decide that Whether the Action of the management of Dena Bank in terminating the services of Shri N. B. Oza vide order dated: 06-07-1996 is legal and justified? If not, to what relief the said workman is entitled?

9. Looking into this Reference case, the second party concerned workman has been examined vide Ex. 15, and was cross examined by the first party but nothing has been brought out in his oral evidence by the both the parties. The second party concerned workman was charge sheeted that, on 27-10-1993, while working as a clerk at Kodinar Branch, concerned workman had accepted a bearer cheque No. 1949532 dated: 27-10-1993 for Rs. 10,000 from Shri Ashok Kumar L. Gansesh, account holder of S. B. A/c. No. 10241 and the said cheque was issued from S. B. A/c. No. 7820 or crediting in S. B. A/c. No. 10241 of Shri Ashok Kumar Ganesh. From the records, it was observed that no such credit of Rs. 10,000/- was given in the S. B. A/c. No. 10241 either on 27-10-1993 or thereafter. Not only that, concerned workman had not credited the amount

of Rs. 10,000 in S. B. A/c. No. and made the credit entry 27-10-1993 in the passbook of the account holder. Further concerned workman was charged that, he had encashed the cheque and had fraudulently received the amount. After that, the said amount of Rs. 10,000 was refunded by the concerned workman to the account holder when the matter was brought to the notice of the Branch by the account holder. Thus, the concerned workman had instead of crediting the cheque in question to the S.B. A/c. of the complainant the concerned workman had fraudulently withdrawn the amount from the account No. 7820. Looking to the records of the departmental inquiry, presented by the first party it seems that the Shri Ashok Kumar L. Ganesh had stated in his complaint letter dated; 23-12-1993 that on 27-10-1993 he had opened a new S.B. A/c. by depositing Rs. 100 and a cheque for Rs. 10,000 issued from S.B. A/c. No. 7820 was given to the concerned workman to credit the same in newly opened account. He had further stated that concerned workman had informed by him that Rs. 10,000 has been credited in his account and he had also made entry to that affect in pass book. But while verifying from records of the Bank he had found that there is no credit entry in ledger folio of the Bank account on 27-10-1993 or thereafter. There was only one entry of Rs. 100 on 27-10-1993. However concerned workman had made entry of Rs. 10,000 in pass book of account holder on 27-10-1993. On scrutiny it transpires that cheque No. 532 was encashed on 05-11-1993 and not on 27-10-1993. While Mr. Dholakia cashier of Kodinar Branch after verifying has deposed in his deposition that, on 05-11-93 cheque No. 532 of S.B. A/c. No. 7820 was debited in the ledger folio by mentioning "Pay to Self" for Rs. 10,000 and the same had been paid vide cash scroll No. 33. He has further stated that he had paid the amount of Rs. 10,000 to concerned workman after obtaining his signature on the reverse of the cheque in the denomination of Rs. 8,000 in Rs. 10 currency note and Rs. 2,000 in Rs. 5 currency note which he had kept in his bag by narrating the incident for payment of cheque in question. Mr. Ashok Kumar is having good relations with concerned workman which he has admitted in his sapat patra dated 3-3-94. The concerned workman has also admitted in his written statement that he is having good family relations with Mr. Ashok Kumar. In written statement concerned workman has stated "while Shri Ashok Kumar Ganesh came to know that such an inquiry was going on against him, which may result in a severe punishment to him, he had given a statement in which he had stated that the earlier statement given by him was wrong as it was given due to some misunderstanding" From all this evidence it clearly transpires that due to friendship and family relations Mr. Ashok Kumar had given back dated SAPAT PATRA to the concerned workman to help him in inquiry proceedings. This declaration in the form of PRATIGNA PATRA has been given by Mr. Ashok Kumar on 7-9-95 wherein he had declared that he has received Rs. 10,000 from cashier Mr. Dholakia on 5-11-95 at 3-00 p.m. This shows that he had anticipated the payment before two months. This is a false declaration given by

Mr. Ashok Kumar to mislead the inquiry authority and tried to save his friend from the punishment. While actual payment was made on 5-11-93. The concerned workman in his written statement has stated that he has not signed on the reverse of cheque No. 532 and further stated that if cheque in question is produced he can prove his innocence. It is true that if disputed cheque is presented everything will come out in black and white. But he knows that Bank is not in a position to produce the cheque as all relevant records of the Bank have been completely destroyed in the fire on 24-11-93 as reported by presenting officer. The Xerox copy of the FIR lodged by the Bank has been produced in the departmental inquiry. In the present case thus it is very clear that the concerned workman is in a guilty.

10. In the present case concerned workman has taken his defense that his intention was bonafied and was not malafied. But looking into the facts and records of the departmental inquiry it is proved by the first party, that by an act of making false entry in the pass book by encashing the cheque and not affecting the credit entry in the S.B. A/c. Thus, first party has proved by the documentary evidence that, the concerned workman has made cheating and breach of trust with Bank as well as with the customer.

11. In this Reference case, it is necessary to see the judgment delivered by Hon'ble Supreme Court of India in 1999, II, C.L.R. page. 08, State Bank of India & Others V/s. T.J. Paul, Looking into the judgment delivered by the Hon'ble Supreme Court of India, it is published in the head note as under :

"Respondent then Manager in Bank of Cochin (since amalgamated with appellant Bank) was held guilty of gross misconduct and punishment of dismissal without notice was imposed on him-Appellate Authority modified the punishment to removal from service -High Court held that misconduct proved was 'minor' and Bank would impose punishment for minor misconduct-In this appeal, Supreme Court held that the misconduct was grave and not minor, but removal from service is not one of the prescribed punishments under Rule 22(v) of Cochin Service Code and as such the Bank may impose one or other punishments for major misconduct enumerated in para 22(v) of the Rules, other than dismissal without notice."

12. Further, in this Reference case, it is necessary to see the judgment delivered by Hon'ble Supreme Court of India in 2003, I, C.L.R. page. 712, Regional Manager, U.P.S.R.T.C., Etawah & Others V/s. Hoti Lal & Others. Looking into the judgment delivered by the Hon'ble Supreme Court of India, it is noted by the Supreme Court of India in its Judgment para-10 as under :

"10.....A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental

set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or act in a fiduciary capacity, highest degree of integrity and trustworthiness is must and unexceptionable. Judged in that background, conclusions of the division bench of the High Court do not appear to be proper....."

13. This Tribunal gives a great honour to the principles laid down in the aforesaid both the cases. In the present case also the concerned workman is deals with public money and is engaged in financial transactions or acts in a fiduciary capacity. I have gone through the documents, oral evidences, arguments from both the sides and the findings of the inquiry Authority, Looking to the documentary evidence presented by the both the parties, I have come to the conclusion that the charges levelled against the charge sheeted employee have been proved beyond any doubt and these proved charges amount to gross misconduct within the meaning of Para 19-5 of the Bipartite Settlement. The concerned workman by the first party it has been proved that the concerned workman has acted of cheating and has breached the trust of the first party concerned. Further, it has been proved by the documentary evidences. The findings given at the end of the departmental inquiry by the enquiry Authority is given on the records presented by the second party concerned workman and the first party. Hence, it is very clear that, the findings given by the inquiry authority is legal and justified in the eyes of the law prevailed. The first party has come to the conclusion that the concerned workman should be dismissed from the services and it has been done by the first party in this case. Hence, this Tribunal is of opinion that, the concerned workman is deals with public money and is engaged in financial transactions or acts in a fiduciary capacity have to be dealt with iron hands. This Tribunal is of opinion that, the decision taken by the Bank in terminating the services of the concerned workman vides order dated : 5-7-1996 is legal and justified in the eyes of the law. In considering all aforesaid circumstances, this Tribunal believes that the present Reference should be rejected. Therefore, this Tribunal passes the following order :

ORDER

1. The Reference made by Mr. N.B.Oza is rejected accordingly.

2. No order as to costs.

Bhavnagar.

Dated : 25-2-2010

S. S. PANCHAL., Industrial Tribunal

नई दिल्ली, 8 मार्च, 2010

का. आ. 870.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-2 मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/56/2006/240/2010 को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-03-2010 को प्राप्त हुआ था।

[सं. एल-30011/70/2006-आई आर(एम)]

कमल बाखरू, डेस्क अधिकारी

New Delhi, the 8th March, 2010

S. O. 870.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/56/2006/240/2010) of the Central Government Industrial Tribunal-2 Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation of the management of Bharat Petroleum Corporation Ltd., and their workman, which was received by the Central Government on 4-3-2010.

[No. L-30011/70/2006-IR(M)]

KAMAL BAKHRU, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, MUMBAI

PRESENT:

A. A. Lad, Presiding Officer

Reference No. CGIT-2/56 of 2006

Employers in relation to the Management of Bharat
Petroleum Corporation Ltd.

The General Manager (HRS),
Bharat Petroleum Corporation Ltd.,
Bharat Bhavan-I, Currimbhoy Road,
Ballard Estate, Mumbai 400 001.

1st Party

and

their Workmen

1. The General Secretary,
Petroleum Employees' Association,
C/o.BPCL, Irimpanam, Cochin 682 309.

2. Bengal Oil & Petrol Workers Union,
7C, AJC Bose Road,
Kolkata 700 017.

3. The General Secretary,
Bharat Petroleum Technical &
Non-Technical Employees' Association,
Flat No.502, Saileela, RCF Road,
Anik Village, Chembur,
Mumbai 400 064.

4. Process Technicians' &
Analyst' Union,
G-9 Mahul Sea Breeze Co-op. Housing
Soc., Bahari Colony, Mahul,
Mumbai 400 074.

5. The BPCL Employees' Union,
Navgire Niwas, Behind Shalimar Hotel,
Mahul, Chembur, Mumbai 400 074.

6. The Petroleum Workers' Union,
Tondairpet, No.9, 11 Line Beach,
Chennai-600 001.

7. Petroleum Workers' Union,
3 & 4, Hare Street,
Calcutta, Kolkata 700 001.

8. The General Secretary,
Bharat Petroleum Technician Union,
RZ-G-140/6 Raj Nagar, Part II,
DDA Park, Palam Colony,
New Delhi 110 045.

9. The President,
Bharat Petroleum Corpn. Empl. Union (CITU),
Kamgar Bhavan, At & Post: Bokadvire,
Taluka Uran (Navi Mumbai),
District Raigad (MS).

10. The General Secretary,
Petroleum Employees' Union,
Tel-Rasayan Bhavan, Tilak Road,
Dadar, Mumbai 400 014.

11. Petroleum Workmen's Union,
Shramjeevi Awaz, 34, Sewree Cross Road,
Sewri, Mumbai 400 015.

12. Petroleum Workers Union,
4/7, Asaf Ali Road,
New Delhi 110 002.

13. Maharashtra General Kamgar Union,
252, Janta Colony, Ramnarayan Narker Marg,
Ghatkopar (West), Mumbai 400 077.

14. The General Secretary,
Petroleum Employees Union,
C/o. BPCL No.1, Ranganathan Garden,
Anna Nagar, Chennai 600 040.

15. The General Secretary,
Bharat Petroleum Karamchari Union,

C/o. Anil Surve, Irani Chawl, 3414,
Room No. 76, Dattatreya Lad Marg,
Kala Chowki, Mumbai-400 033.

16. The Petroleum Employees' Union,
C/o. Indian Oil Employees' Trust BPCL Unit,
6/1-B, Abdul Hamid Street, Kolkata-700 069.

17. The BPCL Karamchari Association (Kolkata)
144, Lenin Savani, Kolkata.

18. Bhartiya Karmachari Kamgar Sangh,
5, Navalkar Lane, 1st flr; Prathana Samaj,
Girgaon, Mumbai-400 004.

19. The Cochin Refinery Workers' Assn;
(CRWA) Ambalamugal, Kochi Refinery,
Kochi (Kerala)-682 302.

20. The Refinery Employees Union (KRL),
Ambalamugal, Kochi Refinery,
Kochi (Kerala)-682 302. 2nd Party

APPEARANCE

For the employer	: S/Shri R.S. Pai, Suresh Babu, Advocates.
For the Workmen	: For Unions at Sr. No.
4, 5, 9, 11, 13 & 15	Mr. Arshad Shaikh Advocate.
19 & 20	Mr. T. Vijaykumar and Shri M.B. Anchan, Advocate.
1, 6, 7, 8, 12 & 14.	Mr. H. Kumar Vaidyanathan, Advocate.
3	Mr. Jayant G. Gadkari Advocate.
2, 10, 16, 17 & 18.	No appearance.

Date of reserving Award : 4-12-2009.

Date of passing of Award: 4-01-2010.

AWARD

The matrix of the facts as culled out from the proceedings are as under:

The Government of India, Ministry of Labour by its Order No.L-31011/70/2006-IR(M) dated 21st November, 2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:

“Whether the Industrial Dispute that arose subsequent serving of strike notice dated

3-8-2006 (copy enclosed) served by the Unions on the issue of relativity of the quantum of PLIS between the management and the workmen justified? If so, to what relief the concerned workmen are entitled?”

2. To support the subject matter in the reference, the Claims Statements are filed by various Unions more precisely by Second Party Union No.1 viz. Petroleum Employees Association at Exhibit 40 stating and contending that, the decision taken by the Management for declaration and distribution of PLIS for the years 2002-03, 2003-04, 2004-05 and 2005-06 is arbitrary, derogatory and discriminatory. It is further contended by the Union No.1 that, the workmen being represented by it are employed at Bharat Petroleum Corporation Limited in their Marketing Division in Southern Region. It is further contended by the Union No.1 that, apart from the said Union there are eight more trade Unions functioning in the marketing Division of the 1st Party all over India. It is further contended by the Union No.1 that, 1st Party is engaged in the business of Marketing and Distribution of Petroleum Products. It is further contended by the Union No.1 that, in 1st Party's Marketing Division has fixed workmen in 11 Grades and all the 11 grades prevailing in the 1st Party's Marketing Division are open ended as per the Long Term Settlement on Wages signed in the year 2001 with percentage increment every year. It is further contended by the Union No.1 that, the Payment of Bonus Act, 1965 is applicable to the 1st Party and since all the employees are drawing salary more than Rs.3500 per month, the employees were being paid Performance Linked Incentive (PLI) in lieu of bonus. It is stated by the 2nd Party Union No. 1 that, such custom and usage to pay Performance Linked Incentive (PLI) to the workmen as well as to the Managers/officers of the 1st Party in place of bonus, is existing in the 1st Party's Refinery & Marketing Division locations in India as well. It is further contended by the Union No. 1 that, as per such practice the workmen and officers were getting a fixed amount of Rs.6000 per annum as Performance Linked Incentive (PLI) in the month of August i.e. at the time of Onam Festival, every year in lieu of Bonus, irrespective of the fact that whether the basic salary scales are open ended or closed or ended and there was absolutely no discrimination amongst the workmen and Managers/officers in respect of distribution and payment of PLI.

3. It is further submitted by the Union No.1 that, the 1st Party unanimously transferred large amount of money to the accounts of the Managers/officers of 1st Party in July 2006 and when the 2nd Party Union No. 1 contacted the Management, it was informed that, the

payment made to the Managers and Officers are additional benefits and the same will be extended to the workmen after the Management takes decision. It was also informed that, PLI scheme is being revised for the period 2004-05 and 2005-06 with certain ceiling on basic salary of the workmen, in respect of their grades. It is further submitted by the Union No.1 that, the Management of 1st Party has thereafter transferred PLI payments to the account of the workmen without any consultation with the Union and without any intimation by the Union or the workmen. It is further submitted by the Union No. 1 that, it was surprised to find that, there was total discrimination in distribution PLI payment to the workmen and Managers/officers and 1st Party did not consider the existing basic wages of the workmen for calculating PLI payment. It is further submitted by the Union No. 1 that, the Management has only considered the basic wages of the workmen at the starting level of their grades and not the existing basic wages drawn by the workmen at the relevant time. It is further submitted by the Union No.1 that, while calculating and distributing PLI amount the workmen and Managers/officers, the 1st Party has considered some percentage of increase in the starting basic pay. It is further submitted by the Union No.1 that, there was total discrimination while considering the percentage of increase in the starting basic pay for the PLI purpose. It is further submitted by the Union No.1 that, the Management has considered increase from 0 to 10% in the starting basic pay of the workmen from 1 to 11 grades for the purpose of calculating PLI payment, whereas for Managers and Officers it has considered increase from 0 to 75% in their starting basic pay. It is further submitted by the Union No.1 that, due to such arbitrary and discriminatory action the Management and officers are getting huge amounts as PLI payments, whereas the workmen are getting only meager amount compared to the Managers/officers. It is further submitted by the Union No.1 that, such discrimination was brought to the notice of the 1st Party and asked it for rectification but no step was taken by the 1st Party. It is further contended by the Union No.1 that, since similar discrimination was there in making PLI payment to other workmen employed in other units and offices of the 1st Party, almost all the trade major trade Unions functioning at the national level in the 1st Party Company have raised objection to such system adopted by the 1st Party. It is further submitted by the Union No.1 that, in other oil companies such as Indian Oil Corporation, ONGC etc. there is a system of making PLI payment in lieu of bonus and these companies have never discriminated the workmen and Managers/officers while distributing PLI payments and in the said Companies workers are having pay and benefits similar to the employees working in Bharat Petroleum Corporation Limited.

4. It is further contended by the Union No.1 that, the increase in PLI given to the workmen for different

grades are for name sake compared to the increase given to the Managers/officers. It is further submitted by the Union No.1 that, the PLI payment distributed amongst the workmen and officers by the 1st Party Company are from the corpus fund in (profit) but distributed discriminatory and arbitrary manner which is not justified at all.

5. It is further submitted by the 2nd Party Union No.1, that, when the 1st Party unilaterally transferred the PLI payment in discriminatory and arbitrary manner to the top the account of their members, the Union has protested against the same and accepted the PLI amounts under protest. It is further submitted by the 2nd Party Union No.1, that, 1st Party did not responded to the repeated requests made by it and decided to go on two days strike in September, 2006 and thereafter a joint strike notice was served on the Chairman and Managing Director of the 1st Party by 20 Unions, including Union No.1, on 30-8-2006 calling the strike for 2 days i.e. on 19-9-2006 and 20-9-2006 and 20-9-2006 in the 1st Party's Company and as a result thereof conciliation proceedings were held before the Regional Labour Commissioner (Central), Mumbai but it resulted in its failure. It is further contended by the 2nd Party Union No. 1, that hence, the members of its Union along with other concerned 17 Unions struck the work on 19-9-2006 and 20-9-2006 and as immediate reaction to the said strike, 1st party deducted 8 days salary of the concerned employees, as punishment for going on two days strike. It is further submitted by the 2nd Party Union No.1, that, it strongly protested such arbitrary action and illegal deductions made by 1st Party and it along with 17 other trade Unions again served strike notice dated 10-11-2006 on the 1st Party for the proposed strike for three days from 19-12-2006 onwards. It is further contended by the 2nd Party Union No. 1, that, conciliation proceedings were held by the Regional Labour Commissioner (Central), and the Chief Labour Commissioner (Central), New Delhi on 18-12-2006 in that respect. It is further contended by the 2nd Party Union No. 1, that, in the said conciliation proceedings. It was agreed by the Management of the 1st Party that, they would refund 6 days wages along with the wages of December, 2006. It is further contended by the 2nd Party Union No.1 that, since the Management of 1st Party agreed to refund the amount of illegal deductions and also agreed to take steps to resolve the PLIS issue within one month, the said proposed strike was deferred and the next meeting was fixed for 7-2-2007 by the Chief Labour Commissioner (Central) New Delhi. It is further contended by the 2nd Party Union No. 1, that, there was absolutely no positive response from the Management in the meeting convened at Nagpur on 29-1-2007 by the 1st Party in respect of the issues raised by the Union regarding the discriminatory approach of the 1st Party's management

towards the PLI's payment to the workman. It is further contended by the 2nd Party Union No. 1, that, as per the directives of the Chief Labour Commissioner (Central), New Delhi in the conciliation meeting held on 15-2-2007 the Chairman of the 1st Party convened a meeting on 20-3-2007 at Mumbai to discuss and settle the demand of the Union in the matter of PLIS. It is further contended by the 2nd Party Union No. 1, that, as the discussions resulted in failure so the Second Party Union No. 1, along with other Unions have served a strike notice dated 30-3-2007 on the 1st Party Company for the proposed one day token strike on 18-4-2007. It is further submitted by the 2nd Party Union No. 1, that, conciliation proceedings were held on 13-4-2007 and 16-4-2007 by the Chief Labour Commissioner in respect of the said strike notice and the said conciliation proceedings ended in a failure due to the adamant attitude of the 1st Party to resolve the dispute in the PLI Payment.

6. It is further contended by the 2nd Party Union No. 1, that, the 1st Party had paid PLI for the years 2002-03 and 2003-04 to its Management staff and has geared to pay the PLI for the years 2002-03 and 2003-04 to the members of the Union who is not a party to the dispute in Refinery at Cochin. The Conciliation officer has directed the parties to have bilateral discussions and maintain status quo in the matter of payment of PLI for the years 2002-03 and 2003-04 to the Members of Cochin Refinery Employees Association who is not a party to the dispute. However, the Management of the 1st Party has not maintained the status quo as advised by the Conciliation Officer and distributed the PLI payments for the earlier years, i.e. 2002-03 and 2003-04 to the employees, who are not the members of the 2nd Party Union. It is further contended by the 2nd Party Union No. 1, that, while distributing such PLI payment to the employees, who are not the members of the 2nd Party Union No. 1, the 1st Party Company has obtained signatures on undertaking-cum-declaration from those employees. It is further submitted by the 2nd Party Union No. 1, that, those employees who have declared in writing that they are members of the third Union, functioning in Refinery at Cochin, namely Cochin Refineries Employees Association and they are not the members of the Unions, who has raised the present dispute pending before CGIT No. 2, Mumbai were being released payment of PLI for the financial years 2002-03 and 2003-04. The said payment was in clear breach of status quo direction given by the Conciliation Officer i.e. the Regional Labour Commissioner (Central) Cochin and the Chief Labour Commissioner (Central). It is further contended by the 2nd Party Union No. 1, that, the real purpose and intention of the 1st Party in distributing such PLI payments for the year 2002-03 and 2003-04 to the employees of the other Union, who are not the parties to the above proceedings, was to create

unrest amongst the workmen employed at Bharat Petroleum Corporation Ltd. It is further contended by the 2nd Party Union No. 1, that, the 1st Party wants to give clear message to the workmen that, only those employees who do not challenge the arbitrary and discriminatory action of the Management shall only get financial benefits. It is further contended by the 2nd Party Union No. 1, that, great injustice has been caused to the members of its Union due to such arbitrary acts of the Management. It is further contended by the 2nd Party Union No. 1, that, all the workmen irrespective of their Union members are equal before the law and therefore all the concerned workmen, especially the members of the Second Party Unions are entitled for equal payment from the 1st party on par with the amounts distributed to the members of Cochin Refinery Employees Association, who have not challenged the arbitrary and discriminatory action of the 1st Party.

7. It is further contended by the 2nd Party Union No. 1, that, similar situation prevails in the other offices and units of the 1st Party Company all over India. It is further contended by the 2nd Party Union No. 1, that, 1st Party at the initial stage discriminated the workmen and managerial staff in distributing PLI payment and thereafter discriminated the members of the Second Party Unions, who challenged the discriminatory action of the Management and the members of the Union, who have not challenged the discriminatory action of the Management. It is further contended by the 2nd Party Union No. 1, that, those Unions and their members who supported the illegal acts of the management has not got monetary benefit, while the unions and the members, who have challenged the action of the management and brought the matter before the court for justice were denied legitimate payment. It is further contended by the 2nd Party Union No. 1, that, some connected disputes were raised before our Hon'ble High court where some of the union functioning in the Bombay refinery & Marketing Division are involved and are parties and the fact of 1st Party's distributing payments of PLI for the year 2002-2003 and 2003-2004 to only the members of management's favourite Unions was brought on the notice of the Hon'ble High Court and as a result in one of the connected matter being Writ Petition (Lodging) No. 854 of 2007, the Division Bench of our Hon'ble High Court passed orders on 17-4-2007 and 21-4-2007 wherein the Court held that, workmen concerned with the present Reference before this Tribunal are entitled to pray before this Tribunal for interim direction for payment of PLI for the financial years 2002-03 and 2003-04 at least on parity to the amount paid to the other workmen and it also directed that such application for interim relief should be heard by this Tribunal without prejudice to the rights and contentions of the management of 1st Party, including on the issue of maintainability of the said application and granted liberty to the workmen to

move this Tribunal for grant of ad interim relief. It is further contended by the 2nd Party Union No. 1, that, due to the said arbitrary, unfair, unilateral and discriminatory acts of the 1st Party great prejudice, harm and injustice has been caused to the Second Party Unions and their members and the Second Party Union No.1 therefore prayed to hold and declare that the decision for declaration and distribution of Performance Linked Incentive (PLI) taken by the 1st Party for the years 2002-03, 2003-04, 2004-05 and 2005-06 are arbitrary, derogatory and discriminatory and prayed that 1st party Company be directed to calculate the quantum of PLI payments to workmen considering the actual basic pay and dearness allowances drawn by the workmen for the concerned period and considering the increase in their basic pay on par with the percentage of increase considered for Managers/Officers for PLI calculations with further directions to 1st Party Company to pay performance Linked Incentive (PLI) for the years 2002-03, 2003-04, 2004-05 and 2005-06 to all the members of the 2nd Party Union without any discrimination and continue to pay the same for the further periods and also prayed for interim reliefs.

8. Union at Serial No. 4 viz. Process Technicians' & Analysts' Union, Union at Serial No.5 viz. The Bharat Petroleum Corporation (Refinery) Employees Union, Union at Serial No.9 viz. Bharat Petroleum Corporation Employees Union, (CITU), Union at Serial No.11 viz. Petroleum Workmen's Union, Union at Serial No. 7 Maharashtra General Kamgar Union and Union at Serial No. 15 Viz. Bharat Petroleum Karmachari Union filed joint Claims Statement at Exhibit 43 making the same statements and contentions as raised by the Second Party Union No. 1 in Claims Statement filed at Exhibit 40 and contending that, the Unions listed at Serial Nos. 9 and 13 i.e. Bharat Petroleum Corporation Employees Union, (CITU) and the Maharashtra General Kamgar Union respectively have sometime in the month of January, 2007 merged with the Union listed at Serial No. 15 i.e. Bharat Petroleum Karmachari Union. It is further stated that, about 90% of the members of the Union at Serial No. 18 i.e. Bharatiya Kamgar Karmachari Mahasangh have joined the Bharat Petroleum Karmachari Union, therefore Statement of Claim is filed by the Unions at Sr. Nos. 4,5,11 and 15 and would also include due to the merger of the Unions at Serial No. 9,13 and 90% of the workmen earlier concerned with Bharatiya Kamgar Karmachari Mahasangh.

9. Then Claims Statement is filed by Union at Serial No. 5 viz. Bharat Petroleum Technical and Non- Technical Employees Association at Exhibit 29 making out the similar case as made out by Union at Serial No. 1 in Claim Statement filed at Exhibit 40 and stated that Unions are not taken into confidence while finalizing the payment of PLIs in lieu of Ex-gratia for the financial years 2004-05 and 2005-06 and expressed their strong displeasure and protest against

the unilateral decision of the BPCL-Management to pay the benefit of PLIS through the August, 2006 salary to the workmen thereby forcing them to receive it under protest. It is further contended by the Union at Serial No.5 that, the workmen are highly agitated and restive on the way in which the quantum of PLIS has been calculated for the financial years 2004-05 and 2005-06.

10. Then Union at Serial No. 6, viz. Petroleum Workers Union, filed Claim Statement at Exhibit 60 adopting the Statement of Claim filed by the Union at Serial No.12 viz Petroleum Workers' Union, New Delhi.

11. Then Claim Statements are filed by the Union at Serial No. 7 viz. Petroleum Workers' Union, Kolkata, at Exhibit 46, and Union at Serial No 8 viz. Bharat Petroleum Technician Union, New Delhi at Exhibit 49, Union at Serial No.12 viz. Petroleum Workers Union, New Delhi at Exhibit 52, by Union at Serial No. 14 viz. Petroleum Employees Union, Chennai at Exhibit 55, making out the similar cases as made out by the Union at Serial No.1 viz. Petroleum Employees Association filed at Exhibit 40.

12. Then Union at Serial No. 18 viz. Bharatiya Kamgar Karmachari Mahasangh filed purshis at Exhibit 63 adopting the Claim Statement filed by the Union at Serial No. 15 viz. Bharat Petroleum Karmachari Union.

13. Then Union at Serial No. 19 viz. Cochin Refineries Workers Association (CRWA) filed Claim Statement at Exhibit 30 and Union at Serial No. 20.

14. The Refinery Employees Union (KRL) Ambalamugal, Kochi Refinery Kochi (Kerala) filed Claim Statement at Exhibit 31 raising similar contentions as raised by the Union at Serial No.1 viz. Petroleum Employees Association in the Claims Statement filed by the said Union at Exhibit 40.

15. Union at Serial Nos. 2,3,10,16 and 17 have not filed Claim Statements.

16. All these Claim Statements are disputed by the 1st Party by filing Written Statement at Exhibit Nos. 66, 74 and 75 taking into consideration Statement of Claim filed by the Union at Serial No. 19 viz. Kochi Refineries Workers' Association as token, stating and contending that, the Reference is not maintainable and is liable to be dismissed in limine. It is contended by the 1st Party that, the service conditions of the workmen and employees are governed by Long Term Settlements entered between the Corporation and the various Unions representing the workmen employed in the Corporation and last such settlements were signed between the Corporation and the Unions representing workmen of Marketing, Mumbai Refinery and Kochi Refinery on 19-8-2001, 24-9-2001 and 28-8-2002 settling the Charter of Demands. It is further contended by the 1st party that, the benefits given are

accepted by all workmen and the said settlements are valid and are in force for a period of 10 years with effect from 1-6-1998 for Marketing 1-1-1997 for Mumbai Refinery and 1-8-1998 for Kochi Refinery and as per the said settlement the Corporation has given substantial increases in wages, allowances and other benefits to the workmen and the Unions representing them have agreed not to raise any disputes involving financial burden on the Corporation. It is, therefore, contended by the 1st Party that, during the currency of the said settlement reference is not maintainable. It is further contended by the 1st Party that, the pay scale structures of many management staff have been stagnating, with workers drawing far more Basic pay than many Management staff in terms of DPE guidelines. Additional PLI was introduced with a view to compensate executives in Management. It is contended by the 1st Party that, admittedly it had introduced an ex-gratia payment scheme viz. Performance Linked Incentive Scheme (PLIS) in lieu of Bonus, as per the said scheme an ex-gratia payment upto 20% of the salary calculated on maximum salary ceiling as applicable from time to time, is paid on an annual basis to the employees and as a result of the said Scheme, all employees are getting Rs. 6000 per annum as and by way of ex-gratia payment. It is further contended by the 1st Party that, the workmen under PLIS are not entitled for any additional payment. As payment made to the employees of the Corporation is purely of an ex-gratia nature no industrial dispute can be raised for enhancement of such ex-gratia.

17. It is further contended by the 1st Party that, in July, 2006 the Corporation introduced an additional PLI payment for the years 2004-05 and 2005-06 for the Management staff on a graded basis, payable based on decision to be taken on a year to year basis, therefore, 1st Party Corporation on its own accord declared additional PLI payment to workmen also for the same period on graded basis gratuitously and voluntarily though they are not eligible for the same and the payment of the additional PLI is purely gratuitous in nature and does not amount to conditions of service or terms of employment. It is further contended by the 1st Party that, under the Long Term Settlements, the workers are barred from raising any dispute involving financial burden during the currency of the settlements. It is, therefore, submitted by the 1st Party that, since the above issues go to the maintainability of the Reference, the above issues may be tried as preliminary issues.

18. It is further contended by the 1st Party that, since various Union involved in the present Reference had given strike notice threatening to go on strike from various dates and also from 18th April, 2007 on same issue. 1st Party Corporation, therefore, filed Writ Petition being No. 854 of 2007 which came to be disposed of, by our Hon'ble High Court, in terms of order dated 17-4-2007 and

21-4-2007 and subsequent order dated 19-7-2007. It is further contended by the 1st Party that, the Payment of Bonus Act, 1965 is not applicable to the 1st Party Corporation. It is further contended by the 1st Party, that, in view of the Payment of Bonus Act being not applicable to the employees of the 1st Party Corporation, the Corporation introduced PLI Scheme voluntarily. It is further contended by the 1st Party that, it is correct that, even otherwise the Payment of Bonus Act is not applicable to any of the employees employed in the 1st Party Corporation in as much as each of the employee is drawing salary above Rs. 3000 per month and they are not covered by the definition of 'employee' within the meaning of the said expression as defined in Section 2(13) of the Payment of Bonus Act. 1st Party Corporation further states that, in lieu of payment of bonus, PLI Payment has been introduced purely on gratuitous basis and it was introduced purely on voluntary and gratuitous basis. It is stated that, it is denied that, the said PLIS is an accepted custom or usage or payment or that the PLIS would amount to payment under the custom or usage, as alleged or at all and submitted that, it is correct to state that maximum ex-gratia amount payable under PLIS is Rs. 6000 per annum and the said payment is made at times during festivals, viz. Ganesh Chaturthi, Onam, etc. every year and it was also applicable to the managerial employees. It is further contended by the 1st Party that, the Corporation also declared additional PLI to the workmen for the years 2004-05 and 2005-06 voluntarily and on a gratuitous basis. It is further contended by the 1st Party that, the said additional PLI payment was necessitated in view of the grievances of the managerial employees and in view of the embargo on pay revision of managerial employees who are under closed-ended scales with conditions such as perquisites and allowance not to exceed fifty percent of the basic pay, both of which conditions do not apply to those in the workmen category. It is further contended by the 1st Party that, the additional PLI was introduced on year to year basis for the years 2004-05, 2005-06 and though the workmen were not entitled for any benefits under the additional PLI the management voluntarily declared the benefits under the additional PLI to workmen category on a graded basis. It is further contended by the 1st Party that, the workmen category was thus paid or offered additional payment ranging from Rs. 3240 to Rs. 9570 in Refineries and Rs. 4440 to 9840 in Marketing. The Corporation, therefore, stated that, the additional PLI payment as stated above or the original PLI Scheme is neither a part of the service conditions nor the same is payable under the Payment of Bonus Act or under any custom or usage or privilege or under any terms of employment.

19. It is further contended by the 1st Party that, it is correct that, the 1st Party Corporation did not declare payment of additional PLI at the time of Onam festival in

2006 or other festivals and the Kochi Refinery came to be merged with the Corporation on or about 16th August, 2006. It is denied by the 1st Party that, after the merger, 1st Party, Corporation did not give any attention to PLI payment it states that, on the contrary majority of the workmen represented by majority Unions functioning in Kochi Refinery accepted the payment offered under PLI and additional PLI and the second Party No.19 Union and some of the workmen represented by the said Union declined to accept additional PLI payment. 1st Party states that, it informed the said Union that PLI payments are purely voluntary and gratuitous. It is stated that, the additional PLI payments for the years 2004-05 and 2005-06 are purely voluntary and gratuitous and that, for ex-gratia payment under additional PLI for the years 2004-05 and 2005-06 the Unions are not competent to raise any demand or object to basis of rates adopted by the Management and, therefore, their strike notice dated 30-8-2006 was illegal and apart from it their said demand is illegal, unjustified, improper and untenable in law. It is further contended by the 1st Party that, it is correct to say that the 1st Party Corporation transferred the additional PLI payment to the accounts of the respective workmen after declaring the additional PLI benefits for the financial years 2004-05 and 2005-06. It is further contended by the 1st Party that, since additional PLI payments are purely voluntary and gratuitous the distribution of the said payment into the respective accounts of the workmen on the basis of the calculations of additional PLI payment need not give rise to any cause of action for the Union for strike notice dated 30-08-2006 or any subsequent strike notices. 1st Party, the Corporation strongly denied that, there is any discrimination between the Managers and the workmen in the matter of payment of ex-gratia under PLIS as alleged, as said decision is purely of gratuitous nature. It is further contended by the 1st Party that, the open-ended pay scales are applicable to majority of BPCL workmen and 1st Party Corporation denied that, the calculations of additional PLI payment for the management staff and the workmen on the graded basis is arbitrary or discriminatory and there is any discrimination in making additional PLI payment. 1st Party Corporation denied that in the matter of additional PLI payment, the Companies viz. ONGC and Indian Oil Corporation are comparable, as alleged, since ONGC is engaged in oil exploration as opposed to the Corporation which is engaged in refining and marketing petroleum products. It is contended that, the Indian Oil Corporation is too large to be compared with the Corporation considering their turn over and profit. 1st Party states that, the salary structure of the Corporation except in Kochi Refinery are open Ended whereas the salary structure of workmen category in Indian Oil Corporation, which is a larger company, is close Ended. It is stated that, in the Corporation there is no limit to basic pay, payable to workmen category whereas in companies such as Indian

Oil Corporation and Hindustan Petroleum Corporation, the workmen category has a Close Ended salary structure. It is further contended by the 1st Party that, it is important to note that, though the workmen category in BPCL are entitled for annual increment normally @ 4% of the basic wages, identical benefits are not available to managerial staff employed in the Corporation in view of the restricted pay structure and the resultant stagnation of basic pay growth. It is stated that, therefore, the Unions involved in the reference cannot choose the best features available under different Scheme in different Companies in Oil sector and agitate on the matter. It is further contended by the 1st Party that, in the circumstances the totality of the incentive payments, viz. PLS, PLIS and additional PLI, the workmen receive in the 1st Party Corporation is superior to their counterparts in any down stream Oil PSU, by virtue of the open ended pay scale and as such any allegations of discrimination are baseless and devoid of any merits.

20. 1st Party Corporation denied that, the additional PLI payment declared to the workmen is discriminatory or arbitrary or not justifiable as alleged or at all. 1st Party Corporation states that, the additional PLI payment made to management staff was necessitated to address the managerial compensation issues relating to stagnation in pay, in conformity with prevailing DPE guidelines, which is applicable only to the Management staff and therefore not applicable to the workmen category. It is contended by the 1st Party Corporation that, inspite of this the Management voluntarily and gratuitously extended the benefits to the workmen category and declared additional PLI payment as stated herein above for the years 2004-05 and 2005-06. It is further contended by the 1st Party that, the additional PLI payment made to officers and additional PLI payment made to workmen category is therefore not in any manner comparable nor the Unions are entitled to seek parity in additional PLI payment with that of the management staff as the workmen are not entitled for any additional incentives in view of the fact that their service conditions are governed by Long Term Settlements. It is stated that, however, additional PLI payment was paid to the workmen as stated above in respect of financial years 2004-05 and 2005-06 as purely on voluntary and gratuitous basis and therefore the Unions are not justified in seeking parity in additional PLI payment with that of the managerial staff. It is further contended by the 1st Party that, it does not admit that, the additional PLI payment to the managerial staff as well as the workmen category entitles the Union or the workmen to raise any demand for parity or for increase in additional PLI payment in as much as additional PLI payment is purely voluntary and gratuitous.

21. It is contended by the 1st Party that, it is correct to say that, Unions continued to threaten to go on strike even though neither the Unions nor the workmen have any right to raise any demand or disputed with regard to

payment of additional PLI relating to financial years 2004-05 and 2005-06 in as much as the said payment were purely voluntary and the various Unions involved in the Reference had given strike notice dated 30-8-2006 and after the said strike notice, the Regional Labour Commissioner (Central), Mumbai initiated conciliation proceedings culminating in the above Reference. It is contended by the 1st Party that, several workmen struck work illegally in violation of the provisions of the Industrial Disputes Act, 1947 as well as the service conditions applicable to them and though deduction of wages for a period of 8 days for proceeding on strike was made the Corporation refunded 6 days' penal wages to the respective workmen to maintain industrial harmony and as agreed in the conciliation proceedings before the Chief Labour Commissioner (C). It is contended by the 1st Party that, it is correct to state that, the Unions again served strike notice dated 3-4-2007 calling one day strike on 18-4-2007 and the Corporation thereafter filed a Writ Petition being No.(Lodging) 854 of 2007 before the Hon'ble High Court at Bombay. It is contended by the 1st Party that, the Regional Labour Commissioner (Central) Kochi also initiated conciliation proceedings and directed the Unions not to proceed on strike. It is contended by the 1st Party that, as far as the distribution of PLI payments for the years 2002-03, 2003-04, the same is made only to such of the employees who have given undertaking to the 1st Party Corporation confirming that, they are accepting the same in full and final settlement and they have no dispute of whatsoever nature in respect of calculation of the said PLI payment. It is further contended by the 1st Party that, it is correct to say that, several members of the Kochi Refineries Employees' Association and other workmen have accepted the PLI payment for the years 2002-03 and 2003-04 by giving undertaking stating therein that they have no dispute of whatsoever nature in respect of the PLI payment for the said years. 1st Party Corporation denied that, the said payment was made in breach of the status quo order made by the Conciliation officer and that, the distribution of the said PLI payment for the years 2002-03 and 2003-04 to the workmen who have given undertaking is intended to create any unrest amongst the workmen as alleged or at all. It is contended by the 1st Party that, on the contrary, the payment was offered to all the workmen who are willing to accept the same by signing undertaking as given by other workmen. 1st Party denied that, the Corporation denied payment to members of Second Party Union at Serial Nos. 19 and 20.

22. 1st Party Corporation denied that similar situation prevails in other offices and units of the corporation all over India as alleged. It is contended by the 1st Party that, with regard to the additional PLI payment for years 2002-03 and 2003-04 are concerned, the workmen who were given undertaking as aforesaid were extended the said benefits, however, those workmen who decline to give such undertaking at the instigation

of the Unions have not accepted additional PLI payments for the years 2002-03 and 2003-04. 1st Party Corporation denied that the Management of the Corporation has discriminated between the workmen and management staff is distributing additional PLI payment. It is contended by the 1st Party that, additional PLI payments to workmen is purely voluntary and gratuitous and therefore Unions or the workmen have no right to raise any demands in respect of the said payment.

23. The Corporation states that, the Corporation has never refused to pay additional PLI payments for the years 2002-03 and 2003-04 to their workmen on the grounds alleged in the statement of claim or otherwise. 1st Party Corporation states that as the workmen declined to accept the offer of additional PLI payments for the years 2002-03 and 2003-04 by giving declaration/undertaking in the prescribed format, the claim of the workmen for payment of additional PLI for the years 2002-03 and 2003-04 is not tenable and additional PLI payment for the years 2002-03 and 2003-04 do not form subject matter of the Reference. 1st Party Corporation states that, payment of additional PLI for the years 2002-03 and 2003-04 will be extended to workmen involved in the above Reference on the same terms and conditions as were made applicable to other workmen and who have accepted the said payment by submitting undertakings. 1st Party emphatically denied that, it acted in a arbitrary, unfair, unilateral and discriminatory manner or by payment of additional PLI to workmen has cause and prejudice, harm and injustice to workmen or the Unions and contended that, they are not entitled for any reliefs as prayed or otherwise and the Reference be rejected.

24. 1st Party filed Written Statement at Exhibit 67 in reply to the statement of claim filed by Second Party Unions at Nos. 1 to 20 stating that it has filed detailed Written Statement in reply to the Statement of Claim filed by Cochin Refineries Workers' Association, Second Party Union No. 19 Refineries Workers' Association, Second Party Union No. 19 (at Exhibit 66) and that, the said Written Statement be treated as Written Statement in reply to the statements of claims filed by other Second Party involved in the Reference.

25. No rejoinder is filed by any of the Union denying the contentions taken by the 1st Party at Exhibits 66, 74 and 75.

26. In view of the above pleadings Issues are framed at Exhibit 82 which I answer as follows :

ISSUES

FINDINGS

- Whether the decision of giving PLIS in lieu of Ex-gratia for financial years 2002-03, 2003-2004, 2004-2005 and 2005-2006 is arbitrary, derogatory and discriminatory ?

No

ISSUES	FINDINGS
2. Whether decision taken to pay benefit of it through salary of August, 2006 is unilateral to decision of BPCL ?	No
3. Whether relativity of quantum of the PLIS between Management staff and workmen is highly derogatory and discriminatory deviating from the practice prevailing?	No
4. Whether benefit in dispute should be calculated on the basis of actual basic and D.A. drawn by the employee?	No
5. Whether act of the Management in applying different format for its staff and different formula for workers is justifiable?	Yes
6. Whether demand of the Unions is not tenable in the light of long term settlement entered into between the Corporation and various Unions?	Yes
7. Does BPCL proves that, since benefits are given by way of Ex-gratia, employees are not entitled to seek addition in it?	Yes
8. Whether act of the Management in declaring PLI on its own accord is purely gratution in nature and does not amount to condonation of service or terms of employment?	No
9. Whether reference is maintainable?	Yes
10. Whether decision of Management in distributing PLI payment for the year 2002-2003 and 2003-2004 to the employees who undertake that "they are accepting it in full and final settlement and they have no dispute" are only eligible to get it, is just and proper ?	Yes
11. Whether Management cannot take a defence of 'non-maintainability of reference' in written statement since it has not taken that while objecting interim relief prayer?	No
12. What relief Unions can get?	No relief
13. What order?	As per order passed below.

REASONS:**ISSUE NOS. 9 & 11 :**

27. I am taking this issue at the beginning since Unions have taken stand that Management cannot take stand of non-maintainability of the Reference since it has not taken said contention while opposing interim relief prayer made by the Unions. It is to be noted that, this reference is sent by the Government of India, Ministry of Labour, New Delhi, as per the directions given by the Hon'ble High Court while discussing Writ Petition No.854 of 2007 on 21-4-2007 and order passed on 19-7-2007 where Hon'ble High Court gave liberty to the Unions to make application and seek relief in the form of interim relief. It is contended by the Union that, said order is not challenged by the 1st Party before any forum Court. Order passed by the Hon'ble High Court on two occasions referred above subsists and on that liberty is given to both to raise such contentions. However, said order of the Hon'ble High Court keeps that points open and give liberty to both parties to make out their respective case in that regard. If we consider this and order passed by Hon'ble High Court it nowhere prevents management to take a stand of non-maintainability of the reference as one of its contention. On the contrary Hon'ble High Court on both the occasions gave liberty to both and instructed this Tribunal to decide the whole issue observing that :

"...the Industrial Tribunal-cum-Labour Court is expected to go into the merits of these reasoning or ancillary issues. The language of the letter further shows that the ancillary disputes to the principal dispute stand referred by necessary implication. Such an approach, besides being just, would also be equitable between the parties as the intent behind the order dated 21st April, 2007 was to avoid strike as well as unnecessary litigation between the parties. Adjudication of their real disputes by the competent forum was the primary object without disturbing the harmony of employer-employee relationship." "...the Industrial Tribunal-cum-Labour Court would deal with the entire matter in terms of the order of reference and clarificatory letter dated 15th May, 2007, keeping in view the observations made in this order."

28. From this it reveals that, all points are kept open to the parties which they can raise before this tribunal so that entire issue involved between the parties

will be sorted out. So in my considered view Management is not restrained in taking stand of maintainability along with other stands only because both kept silent on the order passed by Hon'ble High Court and did not challenge it anywhere. So I answer these issues observing that, Management can take contention of maintainability of the Reference and so Reference is maintainable in the present form.

ISSUE NOS. 1 TO 8 AND 10 TO 12:

29. Now, I am taking these Issues together since these Issues cannot be discussed separately as they are linked with each other.

30. Here number of Unions who are involved which are in total 20, have raise dispute regarding performance Linked Incentive Scheme (PLIS) introduced by 1st Party to its employees and managerial staff. It is to be noted that, initially 1st Party was known as M/s. Kochi Refinery Limited which was later on merged with, "Bharat Petroleum Corporation Ltd." with effect from 18-8-2006. This 1st Party is engaged in manufacture motor and aviation sprit, Diesel oil, Kerosine oil and Diverse Hydrocarbon oil and its blends etc, Besides that 1st Party Company has another refineries at Mahul, Bombay and storage, installation Depots, offices retaining units at various location in India. It is case of the Unions that, 65% workers working with 1st Party are members of Unions Nos. 19 and 20. These workers are working in 7 grades and all the 7 grades are prevailing in the Kochi Refinery. The minimum basic wage and maximum basic wage of each grade are specified by way of Long Term Settlements. It is case of the Unions that such system is followed in Kochi Refinery for a long time. It is case of the Unions that, as per closed ended scales, the present basic wages of Grade-1 starts from Rs. 3650 and closes at Rs.9000 whereas Grade 7 starts at Rs.5900 and closes at Rs.17000. It is case of the Unions that, the payment of Bonus Act, 1965 is applicable to the 1st Party Company. However, since all the employees are drawing salary more than Rs. 3500 per month employees were being paid Performance Linked Incentive (Which will be hereinafter referred as "PLI"), in lieu of bonus. It is story of the Union that, such custom and usage to pay PLI to the workmen as well as to the officers of the 1st Party in place of Bonus exists in Kochi Refinery as well as other, Refinery, storage, installation, depots, offices, retailing units at various locations in India. It is further story of the Union that, such a customs is being followed in Kochi Refinery. According to

Union as per such accepted custom, usage and practice the workmen and the officers were getting a fix amount of Rs. 6000 per annum as performance Linked Incentive in the month of August i.e at the time of "Onam" festival every year in lieu of Bonus. It is further story of the Union that, there is absolutely no any discrimination while distributing such amount amongst the workmen and managerial staff.

31. It is story of the Union that, to their surprise the Management did not make payment of PLI in the month of August, 2006 at the time of "Onam" festival and the Management was delaying the distribution of the PLI to the members of the Union. According to them it was custom to pay PLI before start of 'Onam' every year and said custom was not followed by the 1st Party. It was protested by the Union which was not considered by the 1st Party. On that Union No.19 raised its anxiety in delay in releasing the payment and asked Management of the 1st Party to release payment as early as possible. Even members of the Union approached 1st Party by writing letters to the Management. However, the 1st Party instead of releasing the PLI to the workmen had unanimously transferred large amount of money to the accounts of the officers of the Management. When it was noted by the Union that huge benefit was given to the officers staff of the 1st Party but nothing was given to the workers who were members of the Union contacted Management and informed that payment made to the officers of the Management is additional benefit and on that basis members of the Union also be benefited. That time management agreed to consider the demand of the members of the Union and discussion took place. Besides 1st Party Party informed that PLI scheme is being revised for the year 2004-2005 and 2005-2006 with certain ceiling on basic salary of the workmen in respect of their grades. According to Union Management of the 1st Party has thereafter transferred PLI payment to the accounts of the workmen without any consultation with the Union or intimation to the workmen or Union. It is story of the Union that, after looking to the said amount transferred in the accounts members of the Union it surprised to find that, there was huge discrimination in distribution of PLI payment to the workmen and managerial staff. They also noted that, 1st Party has not considered the existing basic wages of the workmen while calculating the PLI payment. They also noted that, the Management

has only considered the basic wages of the workmen at the starting level of their grades and not the existing basic wages drawn by the workmen at the relevant time. It is further case of the Unions that, while calculating and distributing PLI amongst the workmen and officers the 1st Party Corporation considered only some percentage of increase in the starting basic pay. It is story of the members of the Union that, while calculating PLI of the workers and managerial staff of the 1st Party, there is total discrimination in giving said PLI. It is further story of the members of the Union that, 1st Party Company has considered only increase upto 10% in the starting basic pay for the workmen for the purpose of calculating PLI payment. Whereas it considered increase upto 75% in their starting basic pay to the officers staff and managers of the 1st Party while granting PLI to them. According to the Unions, huge discrimination is made by the 1st Party while granting said PLI to the managers and officers of the 1st Party which is not given to them and they pray that, the said PLI should be given to them on the same footing which is given to the staff members and the managerial staff. It is stated that member of the Union were also not happy with the decision of the 1st Party is transferring PLI payments in discrimination and arbitrary manner to the members of the Union. So by letter dated 29-8-2006 they accepted the said payment under protest. It is story of the members of the Union that, since Company has not responded to the repeated requests made by the members of the Union, these Unions decided to go on one day strike in September, 2006 which was later on deferred on the basis of the decision taken by all the major trade unions functioning in the 1st Party and decided to go on 2 days strike in September, 2006. It is further story of the Union that, strike notice was given by several Unions for strike of 2 days on 19-9-2006 and 20-9-2006 in the 1st Party's installations. It is further story of the Union that, on that Conciliation proceedings were held before Regional Labour Commissioner (Central), Mumbai, but due to adamant attitude of the 1st Party Company the conciliation failed. It is story of the Union that, though they struck the work on 19-9-2006 and 20-9-2006 for that as immediate reaction to the said strike 1st Party deducted 8 days salary of the concerned employees as punishment. It is story of the Unions that, said was strongly opposed by the members of the Union on which again there was conciliation

proceeding were held before various Regional Labour Commissioner where there was amicable settlement of deducting salary of 6 days instead of 8 days and 1st Party agreed to refund the amount illegally deducted and agreed to resolve the PLI issue within one month. It is further story of the 2nd Party Unions that, since there was absolutely no positive response from the Management of the 1st Party, Unions decided to go on strike on 18-4-2006. The conciliation proceeding were also again held by the Regional Labour Commissioner (Central), Cochin, in respect of the said strike notice and in the said Conciliation proceeding Conciliation officer directed 1st Party to maintain status quo. It is story of the Management of the members of the Union that, 1st Party has not maintained the "status quo" order passed by the said Conciliation Officer in respect of the distribution of the PLI payment for the earlier years i.e. 2002-03 and 2003-04 to the employees who are not the members of the Union and who are involved in the reference. It is further story of the Unions that, while distributing such PLI payment to the employees, who are not members of the Unions involved in the reference obtained signatures on undertaking cum declaration from those employees. It is further story of the Union that, employees who have declared in writing that, they are members of the third union and are not the members of the Unions involved in the reference were being released payment of PLI for the financial year 2002-03 and 2003-04. According to members of the Union, said payment was made by 1st Party by committing clear breach of status quo order of the Regional Labour Commissioner (Central), Kochi. According to members of the Union, real purpose and intention of the 1st Party in releasing said PLI payments for the year 2002-03 and 2003-04 to the members other Unions, who are not parties to the above proceeding was to create unrest amongst the workmen employed at Kochi. It is further story of the Unions that, 1st Party Management wants to give clear message to the workmen that, only the employees who do not challenge the arbitrary and discriminatory decision of the management, shall only get financial benefits. According to these, Unions those members and their members who supported the illegal acts of the management has got monetary benefits, while those who have challenged the action of the management and are involved in the reference are denied legitimate benefits for the years 2002-03 and 2003-04. According to the Unions PLI is long outstanding. It is further story of the Unions that, for the year 2002-03 and 2003-04 who have supported the illegal

acts of the Management for payment of PLI were treated on par with officers. That time all were getting maximum benefit of Rs.6000 which was then increased while giving PLI for the years 2002-03, 2003-04 and at that time there was arbitrary increase given to the employees is of Rs.9000 where higher increase is given to the managerial staff was 0 to 75%. So by that all this were disturbed. So it is prayed that, PLI be given on equal footing to the members of the Union who are involved in the reference at par given to the managerial staff. Whereas case of the 1st Party is that, PLI is not right of the members of the Union. It is contended that, it is purely "gratuitous" in nature and does not amount to "conditions of service or terms of employment". It is case of the 1st Party that, there was a Long Term Settlement and by the that workers are barred from raising any dispute involving financial burden during the currency of the said settlement. According to 1st Party employees involved in the reference are governed by Long Term Settlement and various Unions signed settlements which took place lastly between the Corporation and the Members of the Union on 19-8-2001, 24-9-2001 and 28-8-2002. It is case of the 1st Party that, benefits are given as per the said settlements and the benefits were accepted by all those workmen. It is case of the 1st Party that, said settlements are valid and are in force for next 10 years w.e.f. 1-6-1998 for marketing Division from 1-1-1997 for Bombay Refinery and from 1-8-1998 for Kochi Refinery. It is story of the 1st Party that, as per said settlement Corporation has given substantial increase in wages, allowances and other benefits to the workmen and the Unions representing them have agreed not to raise any further dispute involving financial burden on the Corporation. It is case of the 1st Party that, pay scales structure of many management staff have been stagnating with workers drawing far more basic pay than many management staff. Under the terms of DPE guidelines, additional PLI were introduced with a view to compensate the executives working in the management. It is case of the 1st Party that, 1st Party admittedly introduced 'ex-gratia' payment scheme known as performance Link Incentive (which is called as PLIS) in lieu of bonus. It is case of the 1st Party that, as per said scheme 'ex-gratia' payment upto 20% of the salary calculated on maximum salary ceiling is applicable from time to time is paid on annual basis to the employees. It is case of the 1st Party that, as a

result of said scheme, all employees are getting Rs.6000 per annum by way of 'ex-gratia' payment. It is further case of the Corporation that, workmen under PLI are not entitled to any additional payment. It is case of the 1st Party that, as payment was made to the employees is purely of 'ex-gratia' nature, no industrial dispute can be raised for enhancement of such 'ex-gratia' payment. It is case of the 1st Party that, in July, 2006 Corporation introduces additional PLI payment for the year 2004-05 and 2005-06 for the management staff on graded basis, payable on the basis of the decision to be taken on year to year basis. It is case of the Management that, thereafter Corporation on its own accord, declared additional PLI payment to workmen also for the same period on graded basis gratuitously and voluntarily, though they were not eligible for the same. It is case of the 1st Party that, payment of additional PLI is purely 'gratuitous' in nature and does not amount to 'conditions of service or terms of employment'. According to Management under Long Term Settlements, workers are barred from raising any dispute involving financial burden on the Management during the currency of the said settlement. It is denied by the Management that, additional PLI payment made to the Management staff as well as workmen cadre who are members of third Unions are entitled on that basis. It is case of the 1st Party that, distribution of PLI payments for the year 2002-03 and 2003-04 is made only to such employees who have given undertaking to the Corporation confirming that, they are accepting the same 'in full and final settlement' and they have 'no dispute of whatsoever nature in respect of the calculations of the said PLI payment'. It is further stated that, the employees who have accepted the said PLI payment for the year 2002-03 and 2003-04 by giving undertaking are only eligible to get the same. It is case of the 1st Party that, in fact said was offered to all the workmen who are willing to accept the same by signing 'undertaking' as given by other members of third Union, who are happy with the said decision. Since members of those Unions involved in the Reference, are not happy with the said payment and have not given undertaking as is given by the members of other Unions not involved in the reference, the members of these Unions are not entitled to get said benefits. According to Management since payment of additional PLI is 'ex-gratia' and is purely of 'gratuitous' nature it cannot become 'service condition' and does not give 'any right' to the employees of the Corporation to raise issue on that point.

- (32) To prove that, Union placed reliance on the evidence brought on record by way of affidavit of one Pandurang Dharmaji Tikam by filling his affidavit at Exhibit 94 in lieu of his examination-in-chief who repeated the above story as per the stand taken by various unions and says that, the introduction of the PLI scheme had an adverse impact on the workmen as pursuant to the introduction, the workmen started getting lower percentage of benefits as compared to the management staff. He states that, equality in sharing of the profitability of the Corporation was reduced. He states that, equal percentage towards the payment of 'ex-gratia' in lieu of Bonus existed right from the year 1976. He states that, Union has no right to raise dispute about the said PLI distribution to the members of the Union who are not awarded. In the cross this witness admits that, said PLI is 'ex-gratia' payment in lieu of 'bonus'. He admits that, there was productivity Incentives Scheme and payment was made to the workers on that basis. He admits that, they received ex-gratia payment of Rs.5000 in July, 2005 for the year 2004-05. He admits that, all employees received ex-gratia for the year 2005-06. He admits that, Company had put up notice dated 18-8-2006 declaring to make additional PLIS to all the workmen. He admits that, as per that, said benefit was credited in Bank account of every employee by the company. He admits that, on 23-8-2006 Company had deposited additional PLIS in respective accounts of every employee. He volunteers that, said was done by the company without intimation to the workers. He admits that, no any individual worker informed company that, they are not happy with the amount deposited in their accounts. He states that, these Unions have protested the said decision of the Management. He admits that, there was a long term settlement signed with the company by the various Unions involved in the Reference. He admits that, in the said Long Term Settlement, all unions agreed, not to raise any additional demand to burden the company.
- (33) Then these Unions relied on the evidence of Vinod Prabhakaran Nair who filed affidavit at Exhibit 100 in lieu of his examination-in-chief who states that, all the Unions involved in the reference are not happy with the PLI scheme and decision of Management in depositing the PLI amount in the respective accounts of its members. He states that, Management has not made payment of PLI in the month of August, 2006 at the time of 'Onam' festival.
- He states that, the Management was delaying the distribution of PLI amount at the time of Onam which distributed the members of the Union involved in the reference and they were forced to give notice and observe strike for 2 days. He states that, though there was settlement where management agreed to refund payment illegal deductions. He states that while granting PLI and transfer of the amount to the accounts of the members of the Union. According to Union there was no discussion or any criteria considered while taking said decision and while giving said benefit to the workers, He states that increase was given to the staff members of the management upto 75% whereas very meager benefit was given to the workers by distributing the PLI amount and they got it upto 10% of benefit compared which was very less if compared with the benefit given to staff members of the Management. He states that, there was huge discrimination made by the management while distributing such PLI to the workers and the staff members of the Management and no any criteria was fixed. He states that, there was different criteria for the managerial staff and for workers and discrimination was there in making PLI payment to other workmen employed in other units and offices of the 1st Party that some members of the Union were getting less benefits whereas other members of the Union were getting more benefits. He further states that since there was no discussion or no specific formula was there, while deciding PLI amount to the members of the Union and staff members of the Union and staff members of the Management, it is stated that, it is discriminatory and arbitrary and as such it is illegal one also. In the cross this witness admits that, as per settlement dated 28-8-2002 Union agreed not to raise any dispute for the financial year 2004-05 and 2005-06. He admits that, additional PLI was deposited to the respective accounts of the members of the Union on 23-8-2006 for the financial year 2004-05. He admits that, in addition to that all employees were paid Rs.6000. He admits that, during that period Management staff was not given any increase. He admits that, presently BPCI, is not exploring oil as done by other oil Companies as it is not exploring oil as done by ONGC. He admits that, PLIS is made as ex-gratia payment. He admits that, due to the strike notice (s) given by various Unions regarding parity of PLIS with management staff, this reference is made for adjudication. On that Unions closed evidence by filing closing purshis at Exhibit 101, 102 and 103. Against that, 1st Party filed affidavit of Govindrajan at Exhibit 101 to 103 who states that, 1st Party is a public limited

Company registered under the Companies Act, 1956 and is Government undertaking Company. He states that, the Corporation is engaged in the business of refining of crude oil and marketing/retailing of petrol, Diesel, LPG and Aviation fuel. He states that, the service conditions of the workmen of the Corporation are governed by Long Term Settlements entered into between the Corporation and the Unions. He states that, as per said Settlements signed on 19-8-2001, 24-9-2001 and 28-8-2002 various Unions agreed not to raise any dispute involving any financial burden on the 1st Party. He states that, the said Long Term Settlements were to remain in force for a period of 10 years. He states that, there is no other settlement and as such settlement which was of long term by which all Unions are restrained from raising any financial burden on the Corporation during the currency of the said settlement. He states that, under the said scheme, employees are paid an amount not exceeding Rs.6000. He states that, at that time Management staff was not considered. He further states that, in the matter of 'goodwill' and 'grace', the Management also extended monetary benefits purely on a 'gratuitous' basis additional PLIS to workmen category who are having basic ranging from Rs.2342 to Rs.9576 in Refinery and Rs.4440 in Marketing Division. He states that, as per said additional PLIS amount was credited in the respective accounts of the workmen on 18-8-2006 in respect of the financial years 2004-05 and 2005-06. He states that, by letter dated 22-8-2006 letter was written by various Unions to the Chairman and Managing Director of the Corporation showing therein their dissatisfaction with the Corporation's directly depositing the additional PLIS amounts in the respective accounts of the workmen stating that Management has no right to do so. He states that, even strike notice was given which employees cannot give on the point of PLI amount. According to him said PLIS is voluntary decision of the 1st Party and it cannot become service condition and on that, the employees cannot raise dispute. In the cross he states that, PLIS benefit is given to the employees other than the settlement. He states that, PLIS is introduced since salary of its employees does not permit Government to give any other monetary benefits. He states that, in the Cochin Refinery PLIS was introduced since more than a decade. He admits that PLIS are given even to the managerial staff. He admits that, in the year 2001-02 Management withdrew the privilege of the

employees to treat them on par with the managerial staff in granting PLIS. According to him it is the discretion of the Management. He states that, in Cochin Refineries there are 7 grades in employees basic wages and are closed ended basic structure. He states that, there was changes in PLIS in the year 2004-05 since officers were not getting any increment and to benefit them said change was introduced. He admits that no study was conducted to arrive at or to decide basic factor. He admits that, PLIS was introduced on the basis of the payment of Bonus Act. He admits that, said ex-gratia was continuous and uninterrupted process. He admits that ex-gratia was converted into PLIS. He admits that, ex-gratia in lieu of bonus amount is not connected with benefits receivable under Long Term Settlement. He admits that, no undertaking was sought from any of the employee before making payment of PLIS in July, 2004 and July, 2005. He admits that, there was no settlement on that point. He admits that, some of the other Oil Companies calculates PLIS on actual basic pay and dearness allowance. On that 1st Party closed evidence by filing closing purshis at Exhibit 106

- (34) Heard the Advocates of all Unions at length and Advocates of the 1st Party .
- (35) Case of the Union is that, there is the custom and practice of giving the PLI to the workers working on the floor of the 1st Party and when there were number of settlements including Long Term Settlement which bind 1st Party to follow that practice, it is case of the Union that, now said practice cannot be discontinued by the 1st Party by not offering said PLI to all workers. It is case of the Union that, the concerned employees involved in the Reference who are members of these Unions and who are party in the proceedings, are not benefited by the amount of PLI which was offered by 1st Party to the other employees who are members of the other Union and who are not party in this proceedings and while calculating said PLIS as well as, while offering it for the financial year 2004-05 1st Party has introduced illegal change and said decision taken by the Management is unilaterally while deciding quantum of PLI for the year 2004-05 and 2005-06 and is illegal and as well as discriminatory. Whereas case of the 1st Party is that, initially bonus was applicable to the employees working on the floor of the 1st Party. It is case of the 1st Party that, since salary of the workers crossed limit of the amount which does not permit 1st Party to offer bonus to these

employees working on the floor of the 1st Party, it is decided to give incentive amount in place of bonus. Then there was Long Term Settlement which still exists does not permit Union to increase financial burden on the 1st Party. 1st is case of the 1st Party that, since Unions agreed not to put any burden of financial nature it now cannot pray to hike the amount of PLI. Besides it is case of the 1st Party that, PLI was introduced which was given to the Management staff as well as to the workers. Then 1st Party decided to give more benefits to its workers out of the profit which it received and accordingly on basic of the employees, it started giving said amount under the guise of PLIS or under the additional head of PLI to the staff members or Managerial staff. According to 1st Party they have right to decide accordingly. It is case of the 1st Party that, there is no limit to the basic pay payable to the workmen category whereas while computing amount such as of HRA and DA of workmen of category there is close has closed ended salary structure and on that ground Union cannot ask to compare the offer given by the other oil Companies like ONGC and Hindustan Petroleum to their workers with the workers working on the floor of the 1st Party. It is stated that, additional PLI was paid to the workmen for the financial year 2004-05 and 2005-06 purely on gratuitous basis and therefore Unions have no right to say anything about the policy decided by the 1st Party in awarding PLI. It is case of the 1st Party that, no doubt Management staff are more benefited than the members of the Union involved in the Reference, since that benefit was given to them since they are part of production and they were not benefited previously by offering additional PLI to the managerial staff and hence the 1st Party try to compensate them. According to 1st Party since there is no criteria for fixing ex-gratia amount offered by 1st Party, it varies from workman and managerial staff. It is stated that, Union has no voice to say anything on that point. Besides it is stated that, number of other workers who accepted it have accepted it by giving undertaking that, they will maintain peace and will not raise dispute about the offer given by the 1st Party regarding additional PLI for the years 2001-02 and 2002-03 and 2003-2004. It is stated that, the members of the Union involved in the reference are not ready to give such undertaking as given by members of other Unions who are of major Unions on the floor of the 1st Party and those number is major one in the employees working with 1st Party. It is stated that,

the Unions have no voice to say anything on that point. It is case of the 1st Party since members of the Union who are involved in the Reference declined to give said undertaking as given by other members of other Unions while additional PLIS for the years 2002-03 and 2003-04 PLI was not offered to them. According to 1st Party since additional PLI is voluntary decision of the 1st Party which is ex-gratia and which is given in place of bonus 2nd Party these Union has no voice to say anything on it.

36. Now let us first see what is the dictionary meaning of "bonus" which is now replaced by 1st Party by offering "ex-gratia" or which was given on gratuitous basis by the 1st Party. As per dictionary meaning "bonus" means something given into the bargain. It means extra dividend to the Company Shareholders which is distributed on profit basis. Whereas dictionary meaning of 'ex-gratia' is act which is done as a favour. Besides dictionary meaning of the 'gratuitous' word is concerned, it is, which is given free which is not earned or paid for. It also includes meaning of uncalled for or unwarranted or given motiveless on demand without given or assignable reason.
37. So the very purpose in giving additional PLI as per case of the 1st Party is that, it is an ex-gratia and gratuitous payment since initially bonus was given to the employees and it is in place of bonus as claimant of bonus does not qualify workmen to claim Bonus. It is case of the 1st Party that, since employees involved in the reference crossed limit of payment of bonus which prevent the workers to claim bonus as well as prevent employers to offer bonus to workers and by this act, 1st Party had decided to offer them benefit which according to 1st Party has no any limit or guide lines or basis on which it can be given.
38. Advocate for the Unions submit that, said amount was given previously in consultation with the Unions but now for the year 2002-2003 and 2003-04 it was offered without its consultation and discussion with the Unions. According to Unions, 1st Party cannot decide unilaterally on which basis said additional PLI can be offered. According to Unions, 1st Party must consult with the members of the Unions and or the Unions and cannot give or offer or deposite the said benefits in the account of the workers unless they are party to the discussions.

39. It is case of the 1st Party that, the fact of existence of Long Term Settlement cannot be ignored. Management states that, they have Long Term Settlement which bind Unions not to raise any financial burden during its currency. According to 1st Party said Long Term Settlement is in existence. According to 1st Party said Long Term Settlement is valid and is in force for a period of 10 years w.e.f. 19-8-2001 for Marketing, from 24-9-2001 for Mumbai Refinery as well as from 28-8-2002 for Kochi Refinery. According to 1st Party as per said settlement, substantial finance increase in wages and other benefits were given to the workmen and the Unions representing them had agreed not to raise any dispute involving financial burden on Corporation during the currency of the said Long Term Settlement. According to 1st Party in the said circumstances the demand of the Union involved in the Reference is not tenable and maintainable.
40. As far as existence of Long Term Settlement is concerned, if we peruse evidence of both, we find said case of the 1st Party of existence of Long Term Settlement is not seriously disputed by the Unions involved in the reference. Union witness examined at Exhibit 94 admits that, the employees are getting ex-gratia in lieu of bonus from 1991. He admits that, despite that, there was a Productivity Linked Incentive Scheme (PLIS). He admits that, he received ex-gratia payment of Rs.6000 for the year 2004-05. He admits that, other employees also got it for that period. Even he admits that, Company had put up a notice dated 18-8-2006 declaring to give additional PLIS to all workmen. He admits that, as per said benefit was credited in the Bank account of every employee by the 1st Party. He admits that, on 23-8-2006 Corporation had deposited additional PLI in the respective account of every employee. This witness states that, said was done by the Company without intimation to the workers and that is the dispute of the Union as they did that without their consent and it is say of the Union that, such an amount cannot be additional PLI and cannot be fixed by the 1st Party as well as cannot be deposited in the accounts of the employees unless Union agree to that. He admit that, there was Long Term Settlement with the Corporation. He admits that Union was also party to that Long Term Settlement. Then other witness of the Union examined at Exhibit 100 admits that, as per Long Term Settlement dated 28-8-2002 to which he was signatory Union undertook not to raise any dispute for financial year 2004-05. He admits that, in addition to that Rs.6000 was

deposited as original PLI which was given since long. He admits that, said Long Term Settlement was applicable for ten years. He admits that, during that period Management staff members were not benefited by any increase. He admits that PLIS is given separately in each year by putting notice on the notice board. He admits that, as per original scheme workmen category are entitled to get maximum PLI to the extent of Rs.6000 per year. He admits that, in addition to that, Management used to pay additional PLIS Rs.3240 at the minimum and to Rs.9000 at the highest range were given to the workmen of that category. He admits that, there is Kochi Employees Union which is the majority Union whose members has accepted the same and has not raised any dispute. He admits that, Management agreed to pay additional PLIS to the employees category if they undertakes not to raise any dispute for the year 2002-03 and 2003-04. He states that, at present 1st Party is not engaged in exploring oil as is done by ONGC and other companies. He admits that, PLIS is made as ex-gratia payment. Against that, Management witness Govindrajan, examined at Exhibit 104 makes out the story as put by the Management. Even in the cross he states that, PLIS benefit given to the employees is other than the settlement and that PLIS is introduced since salary of the BPCL employees does not permit Government to give any more monetary benefits which was initially considered as ex-gratia. He admits that, said ex-gratia was continuous and uninterrupted process. He admits that, ex-gratia was converted into PLIS. He admits that, ex-gratia in lieu of bonus was a part of Long Term Settlement. He admits that, ex-gratia in lieu of bonus amount is not connected with the benefits receivable under Long Term Settlement. He admits that, Union brought to the notice of 1st Party regarding disparity in making payment under PLIS payment made in comparative concerns. He admits that some of the other oil PSUs calculate PLIS on actual basic pay and Dearness Allowance. So from this evidence and other evidence produced with list Exhibit 94 by 2nd Party, both tried to point out, how their case is based and how their case is acceptable.

41. However, looking to the dictionary meaning of the 'ex-gratia' which does not require any criteria or base or require any parameter on logic while offering ex-gratia since it is voluntary decision of the Management which intend to benefit the employees and looking to Long Term Settlement which is admittedly in existence and which prevent Union to raise any financial burden on the 1st Party.

in my opinion 1st Party's stand on that appears reasonable and just suggestions of the Union involved in the reference will definitely increase financial burden on the 1st Party which does not permit 2nd Party to say that, as it has no voice to say while deciding PLIS by the Management as there is Long Term Settlement which exists and that, they must consider it. Besides it is to be noted that, Kochi Refinery is engaged in manufacturing of Aviation Oil, Kerosene oil, Sprit, Diesel and Diverse Hydrocarbon oil and their blends. It is engaged in the field from 18-8-2006. It is to be noted that, since all employees involved in the reference are getting salary more than Rs.3500 which is also not disputed by the Unions, employees are being paid PLIS in lieu of bonus since they are not eligible to a bonus.

42. According to Union it is the custom. Whereas case of the 1st Party is that, since it is ex-gratia which means at desire of the employer, 2nd Party Union cannot bind 1st Party saying that it is custom or practice in the field of the 1st Party of offering such type of benefits. The citation referred by Unions' Advocate published in 1986 (52) FLR 35 (Bom) while deciding Writ petition No.1983 of 1985 between BEST Undertaking, Bombay and anr. vs Kamgar Sena & ors. observed that, the practice of paying ex-gratia amount in lieu of bonus to all workers for several years has ripened into an agreement and by not giving that, Hon'ble High Court observed that, it breached by the impugned agreement. However, that case is on different footing and point as in the said case (Supra) said amount was decided in connection with the payment in lieu of bonus for the accounting year 1983-84 which was as per resolution dated 3-10-1984 payable to the entire staff. In that case said payment was refused by the Undertaking on the basis of the subsequent resolution dated 15-10-1984 where it was agreed that, such payment is payable to those workers who attended duty atleast for 3 days during the period when some workers were on strike. Whereas in our case there is no such case undertaking which compel the 1st Party to follow it. Besides another citation referred by Union published in 1952 II LLLJ page 635 (SC) in the case of Mahalaxmi Cotton Mills Ltd. vs Their Workmen where it is observed that, if there was an agreement, express or implied to that effect, that agreement could be inferred if the payment had been made over a number of years. However, in that case there was a different issue of strike period and on which decision was taken which cannot be

made applicable in the instant case at hand. Besides he placed reliance on the copy of citation arising from the decision of our High Court in the case of Tata Tea Limited (Bombay) Union vs Tata Tea Limited and anr. where Pension was the subject matter which was treated as service condition. On the said basis Union Advocate submits that, PLIS has also become service condition and corporation cannot bring changes in it without following due process of law. Even he placed reliance on the copy of citation in the case of Union Bank of India Employees Union vs Union of India and ors. where our Hon'ble High Court observed that existing custom privilege or usage arising out of bilateral agreements between the parties which continues for years together is binding on the parties. He also placed reliance on the copy of the decision of our Hon'ble High Court in the case of Cipla Employees Union vs Cipla Ltd. and ors. where it is observed that when there is customary practice which is not followed by the company, thereafter Union can question the Management and on that Management cannot take decision unilaterally. He also placed reliance on the judgement published in 1964 ILLJ SCC page 386 in the case of McLeod & Co. vs Its workmen where it is observed that, history of the relations between the parties coupled with prevailing practice in the comparable concerns in the region strongly supports the view of the Industrial Tribunal that it was an implied condition of service. He also placed reliance on the copy of the decision of Apex Court in the case of Cfip Employees Association vs Chairman and Managing Director where it is observed that, there cannot be any discrimination while offering benefits. However, in the present case act of the 1st Party not offering PLIS to the workmen who decline to give undertaking is under consideration. It is not that Management is not offering said additional PLIS. But on the contrary Management is very much ready and willing to pay additional PLIS to all and even management has suo motu deposited said amount which it deposited in the accounts of the employees who are the members of the Unions and who have given undertaking as expected by who are not involved in the reference. But as they decided not to give to them additional PLIS for the year 2002-03 and 2003-04 since they are not giving undertaking as given by the employees of Kochi Employees Union, they are praying to offer it to them without forcing undertaking as given by other employees who are members of other Unions, not involved in this reference.

(43) All these Unions have prayed for similar prayers in their respective Claim Statement requesting to declare decision of the 1st Party of distribution of PLIS for the year 2002-03, 2003-04, 2004-05 and 2005-06 is arbitrary, derogatory and discriminatory. They also request to direct 1st Party to calculate the said on the actual basic pay and dearness allowances. They also pray to direct 1st Party to pay PLIS for the above year to all its members without any discrimination and forcing them to give undertaking and by interim relief they pray to direct the 1st Party to make payment of PLIS for the financial years 2002-03, 2003-04 to its member on parity to the amount already paid to the members of Kochi Employees Union.

(44) As regards the request of the 2nd Party as referred above, we find that, witness of the 2nd Party Union in their respective depositions admit that, ex-gratia is given in lieu of bonus from 1991. He admits that, despite that profit, Linked Incentive Scheme came to be introduced from 1991. They admit that, they have received ex-gratia payment of Rs.6000 in July, 2005 for the years 2004-05. Even they admit that all employees received ex-gratia for the year 2005-06. That means as far as request made by the Unions to direct 1st Party to make payment of ex-gratia for the years 2004-05 and 2005-06 is concerned, it is already made by the 1st Party and the fact is admitted by the witnesses of the 2nd Party Union. Their case is that, it should be considered on parity with the managerial staff of the management. In my opinion dictionary meaning of 'ex-gratia' give rather clear idea of it and there is no specific case of the Unions that, while granting such ex-gratia, particular things are required to be considered which are not considered by the Management. It is to be noted that, bonus was given as per Bonus Act. There was limit for the bonus. Admittedly employees involved in the reference in are neither eligible nor entitled for bonus since they are getting more salary than the employees who are entitled for bonus. So the payment which is in dispute is regarding amount of PLIS which is called by the Management as 'ex-gratia' or PLIS related with production of the Management. Besides it is not case of the Unions that, there are rules and regulations for ex-gratia as applicable to the bonus. When there are no rules and regulations for ex-gratia and when there are no provisions in what manner such ex-gratia is required in required to be considered by the management as happened in the case of bonus, in my considered view, in the absence of that, 1st Party cannot be compelled to offer it under the influence of the employees while giving such benefits.

(45) Besides admittedly 1st party is not manufacturing or exploring oil as happened in the case of ONGC and other oil companies for which example is given by the Unions to say that, others are paying ex-gratia on the basis of the basic. The case of the Union is that, the workers are getting on the basis of 10% of their basic and whereas Management staff is given 75% of their respective basic. Unions want to say that, 75% benefit given cannot be given to the managerial staff and if it is given, on that basis, it must be given to the workers or to the members of the Union involved in the reference also. Here again question arises how Unions can put condition on the management asking it to give benefit at par given to the managerial staff as per their say and how it can ask Management to compare them on par with the managerial staff? When there is no rule for payment of ex-gratia as happened in the case of bonus question arises on which basis Union can corner the Management and compel it to give benefit at par with Managerial staff on parity? No answer is given by the Unions on that point.

(46) Besides as stated above benefits which can be given by the Management of PLIS for the years 2004-05 and 2005-06 on that basis Management has decided to give benefit for the years 2002-2003 and 2003-04 by issuing circular in January, 2007. It is case of the Management that, accordingly, it is given to the workers who gave undertaking that, they will not raise any issue on that point and it is in full and final settlement. The workers who gave that undertaking are benefited by said amount of PLIS. Even it is case of the Management that, they are ready to offer them if the workers, who are members of the Union, are giving such undertaking and it will credit the said amount in their respective account. But according to Union in that case management cannot compel to give undertaking as given by other workers of other Unions. Besides it is case of the 1st party that, managerial staff was ignored by any settlement. It is case of the Management that, said benefit was extended by the management purely on gratuitous basis treating as additional PLIS and as per that workmen category ranging from Rs. 2342 to Rs. 9578 in Refinery and Rs. 4440 to Rs. 9940 in Marketing would be benefited by that. According to management it is its goodwill package and ex-gratia given by it and it is not offered by any rule or provisions. However, that is not disputed or opposed by the Unions by showing any material to say that, it is not goodwill package or ex-gratia offer of the management which is covered by any provisions and it is admitted by the union.

(47) When Management succeeds in showing that it paid PLIS for the years 2002-03, 2004-05 and 2005-06. Even Management succeeds that, it is ready to pay to the members of the Union who are involved in the reference regarding additional PLIS for the years 2002-03 and 2003-04 if they give undertaking as given by the members of the Union of Kochi Employees Union which is also not shown by the Union that it is illegal, I am of view that, the Union cannot pray for any relief on that when admittedly the Management who has taken undertaking from the members of the Kochi Emoloyees Union. Even witness of the Union admits that Kochi Employees Union have given undertaking. When members of Kohi Employees Union have given undertaking and accepted the PLIS for the years 2002-03 and 2003-04 question arises how these Unions can challenge the act of the members of the Kochi Employees Union in this case. When members of Kochi Employees Union gave undertaking and on that basis when management was happy and when it ascertained that, members of Kochi Employees Union will not raise any dispute and it is full and final settlement towards the PLIS for the years 2002-03 and 2003-2004 and deposited the said amount in the account of the members of Kochi Employees Union, question arises why separate treatment is required to be given to the members of these Unions who are Party in the Reference? When act of the Kochi Employees Union towards PLIS for the years 2002-03, 2003-04 and when they are already benefited, question arises how these Unions can be permitted to challenge the act of the members of the Kochi Employees Union in accepting PLIS for the years 2002-03, 2003-04. It is to be npted that, members of the Kochi Employees Union are being benefited by the PLIS amount for the financial years 2002-03, 2003-04 on their undertaking which was given to the satisfaction of the Management question arises how members of these Unions who are involved in the reference should be exempted from that undertaking if it done definitely there will be industrial disturbance on the floor of the 1st party. When Kochi Employees Union who is the major Union on the floor of the 1st party has accepted the scheme of the 1st party and who are benefited for the finacial years 2002-03 and 2003-04 I do not find any reason as to why the members of the Union involved in the Reference should be exempted from that. Moreover, number of rulings came across of our Hon'ble High Court at Goa while deciding Writ Petition No.176 of 2004 between Mumbai Mazdoor Sabha vs. M/s.Sygenta India Limited and ors., in writ Petition No.365 of 2004, in Writ Petition No.265 of 2008 citation published in 1987 LIC page 637 in case of Tata Chemicals Ltd. vs. Workmen employed under Tata Chemicals Ltd.

(48) If we consider all this coupled with the case made out by both I am of the considered view that, these employees who are the members of the Unions involved in the Reference cannot be benefited by giving directions to the 1st party to distribute PLIS for the years 2002-03 and 2003-04 whithout giving any undertaking as given by the members of the Kochi Employees Union.

(49) As far as distribution of amount of PLIS for the years 2003-04 and 2005-06 is concerned it is already made and now no question arises to direct 1st Party to make payment towards it. Besides since nothing is shown by the Union that, Management is not supposed to discriminate while granting ex-gratia which is not permitted by any rules and regulation in my considered view Management cannot be burdened in any direction since it is ex-gratia amount given in lieu of bonus. Besides when Unions cannot question act of the Management while giving benefit to managerial staff by giving an additional benefit as it is discretion of the Management. In my considered view, Management cannot be asked to consult Unions involved in the Reference while granting benefit to the managerial staff or even offer in the guise of ex-gratia to its workers.

(50) As stated above 1st party is not exploring oil as happen in the case of ONGC and others which does not compel 1st Party to follow the practice prevailing in those Companies and give such type of benefits to its workers, in my considered view, 1st party cannot be burden by giving any more directions. So I conclude that, 1st party cannot be burdened with any relief as prayed by the Unions involved in the Reference. So I answer these Issues to that effect.

ISSUE NO. 12 :

(51) When 2nd party fails to show that, it is entitled to get any directions from this Tribunal and it can compel management to follow it, I am of the view that no any relief can be given to the Unions involved in the reference.

(52) In view of the discussions made above I conclude that, reference is required to reject. Hence, the order:

ORDER

Reference is rejected with no order as to its costs.

Bombay,

4th January, 2010.

A. A. LAD, Presiding Officer

नई दिल्ली, 8 मार्च, 2010

का. आ. 871.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 18/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-3-2010 को प्राप्त हुआ था।

[सं. एल-22012/65/2006-आई आर(सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th March, 2010

S. O. 871.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2007) of the Central Government Industrial Tribunal -cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of Western Coalfields Limited, and their workmen, received by the Central Government on 8-3-2010.

[No. L-22012/65/2006-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE SHRI A. N. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL -CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/18/2007

Date : 23rd February, 2010

Petitioner/Party No. 1: The President,
Rashtriya Koyala Khadan
Mazdoor Sangh, (INTUC), Sasti
Open case Branch, PO: Sasti,
Tq. Rajura, Chandrapur (M.S.)

Versus

Respondent/Party No. 2: 1. The Chairman-cum-Managing Director, WCL, Coal Estate, Civil Lines, Nagpur
2. The General Manager (M & IR), Western Coalfields Limited, Coal Estate, Civil Lines, Nagpur

AWARD

(Dated : 23rd February, 2010)

1. The Central Government after satisfying the existence of dispute between the President, Rashtriya Koyala Khadan Mazdoor Sangh (INTUC), PO : Sasti, Tq. Rajura, Chandrapur (Party No. 1) and the Chairman-cum-Managing Director, WCL, Coal Estate, Civil Lines, Nagpur and other (Party No. 2) referred the same for adjudication to this Tribunal vide its letter No. L-22012/65/2006-IR(CM-II) dated 19-3-2007 under clause (d) of sub section (1) and

sub section (2A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947) with the following Schedule.

2. "Whether the action of the management of Western Coalfields Limited through its Chairman-cum-Managing Director, Nagpur and General Manager (M & IR), Nagpur in not paying the arrears of pay arising on account of implementation of NCWA-V as well as NCWA-VI together with all consequential benefits to the disputant workman Shri Amal S/o Biswanath Chatterjee is legal and justified? If not, to what relief is the workman entitled?"

3. The perusal of record indicates that the petitioner is not appearing before this Court despite of the notice issued to him. He has not filed even the statement of claim. In such circumstances, even the respondent is not appearing before the Court and unable to file the WS. The management has filed the pursis for disposing the case. Since the petitioner is not taking any interest and attends the Court, the reference stands as dismissed for default of the petitioner. Hence this no dispute award.

Date : 23-2-2010

A. N. YADAV, Presiding Officer

नई दिल्ली, 8 मार्च, 2010

का. आ. 872.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 55/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-3-2010 को प्राप्त हुआ था।

[सं. एल-22012/170/2007-आई आर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th March, 2010

S. O. 872.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/2007) of the Central Government Industrial Tribunal -cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Gouri Sub Area of W. C. L. and their workmen, received by the Central Government on 8-03-2010.

[No. L-22012/170/2007-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE SHRI A. N. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL -CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/55/2007

Date : 22nd February, 2010

Petitioner/Party No. 1: The Secretary, Koyala Shramik Sabha (HMS), Ballarpur, Branch, Ballarpur, Chandrapur.

Versus

Respondent/Party No. 2: The Sub-Area Manager,
Gouri Sub-Area of WCL, Post
Gouri, Tah. Rajura, Chandrapur
(M.S.)

AWARD

(Dated : 22nd February, 2010)

1. The Central Government after satisfying the existence of dispute between the Secretary, Koyala Shramik Sabha (HMS), Ballarpur Branch, Ballarpur, Chandrapur (Party No. 1) and the Sub-Area Manager, Gouri Sub-Area of WCL, Post Gouri, Tah. Rajura, Chandrapur (M.S.) (Party No. 2) referred the same for adjudication to this Tribunal vide its letter No. L-22012/170/2007-IR-(CM-II), dated 5-10-2007 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Disputes Act, 1957 (14 of 1947) with the following Schedule.

2. "Whether the action of the management of WCL in denying promotion to Shri Vilas Ramchandra Janve, Excavator Operator is legal and justified? If not, to what relief is the workman entitled?"

3. After filing of the case, both the parties instead of filing their statement of claims have preferred to settle the claim. It appears that both the parties on 25-1-2010 filed a pursis that they have settled the dispute with the following terms and conditions :

Terms and Conditions :

1. It is mutually agreed that since V. R. Janve, Workman has found entitled by the Departmental Promotion Committee for Promotion of Operator Cat. B against the sanction vacancy in the Manpower Budget 2009-10 and he has been recommended for promotion on submission of settlement before the CGIT, Nagpur.
2. It is mutually agreed that the promotion would be made effective from the date of issue of Promotion Order.
3. It is mutually agreed that the Employee or the Union will not claim for issue of Promotion Order with retrospective effect whether from 14-11-2008 or whatsoever for which the dispute has been raised before the Hon'ble Tribunal.
4. It is mutually agreed that this is full and final settlement of the above dispute and Shri V.R. Janve, Workman will not raise any dispute whatsoever before by Statutory Forum/Court of Law/Govt. Machinery/Non-Statutory Forum in this matter either by himself or through any Trade Union.
5. This Agreement will be binding upon the Workman or Trade Union and treated as full and final.
6. It is mutually agreed that Shri V. R. Janve or Trade Union will not treat this case as precedence in any case in future.

7. It is also agreed that Shri V. R. Janve and the Union and the Management will jointly file this settlement before the CGIT, Nagpur with a request to pass a Consent/Award in terms of settlement.

The settlement bears the signature of both the parties. It is in the interest of the petitioner and all are accepting it. Hence, this Award in term of above settlement has been passed. Hence, the Award.

Date: 22-2-2010

A. N. YADAV, Presiding Officer

नई दिल्ली, 8 मार्च, 2010

का. आ. 873.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संयुक्त नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 93/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-3-2010 को प्राप्त हुआ था।

[सं. एल-22012/55/2005-आई आर (सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी.

New Delhi, the 8th March, 2010

S. O. 873.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref No.93/2005) of the Central Government Industrial Tribunal-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Kanhan Area of WCL, and their workmen, received by the Central Government on 8-3-2010.

[No. L-22012/55/2005-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE SHRI A.N. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, NAGPUR**

Date : 23rd, February, 2010

Case No. CGIT/NGP/93/2005

Petitioner/Party No. 1: The General Secretary,
Rashtriya Koyala Khadan
Mazdoor Sangh (RNTUC),
Bhawani Inclines, (Ambada
Colliery), P.O: Palachorai,
Dist. Chhindwara (M.P.)

Versus

Petitioner/Party No. 2: The General Manager, Kanhan
Area of WCL, P.O: Dungaria,
Dist. Chhindwara (M.P.)

AWARD

(Dated : 23rd February, 2010)

1. The Central Government after satisfying the existence of dispute between the General Secretary, Rashtriya Koyala Khadan Mazdoor Sangh (INTUC), Bhawani Inclines, Chhindwara (Party No.1) and the General Manager, Kanhan Area of WCL, PO: Dungaria, Chhindwara (M.P.) (Party No.2) referred the same for adjudication to this Tribunal vide its letter No.L-22012/55/2005-IR(CM-II) dated 08-12-2005 under clause (d) of sub section (1) and sub section (2A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) with the following schedule.

2. "Whether the demand of the RKKMS from the management of WCL, Kanhan Area that Shri Narayan Singh, Clerk may be allowed notional seniority in Grade II w.e.f. 1-1-1984, as in the case of Shri D. Bhattacharya and Shri Prakash Rai, other workmen, with all consequential benefits, is justified? If so, to what relief is the workman entitled?"

3. On receipt of the reference from the Ministry, the notices directing the parties to appear before this Tribunal were served. Despite of the notices nobody is attending the Court. It appears that the petitioner on 7-12-2006 appeared and filed an application under Section 36(4) of the ID Act objecting the appearance of the counsel for the respondent. However, neither the petitioner nor the Union is not appearing and proceeding with the claim. They have not filed even the statement of claim. It appears that none of them is interested in prosecuting with the case. Hence, it has been dismissed for default of the petitioner and pass this no dispute award.

Date:-23-2-2010 A. N. YADAV, Presiding Officer

नई दिल्ली, 8 मार्च, 2010

का. आ. 874.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एडवांस ट्रेनिंग इन्स्टीट्यूट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 94/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-3-2010 को प्राप्त हुआ था।

[सं. एल-42012/67/2004-आईआर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th March, 2010

S. O. 874.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 94/2005) of the Central Government Industrial Tribunal/Labour Court No.1, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Advanced Training Institute, and their workman, received by the Central Government on 8-3-2010.

[No. L-42012/67/2004-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case I.D. No.94/2005

Shri Hardev Singh S/o Late Shri Joginder Singh,
C/o Smt. Sukhdev Kaur,
W/o Shri Ujjagar Singh,
VPO Chawadi,
Distt. Ludhiana

...Applicant

VERSUS

The Director, Advanced Training Institute,
Govt. of India, Ministry of Labour(DGE & T),
Gill Road, Ludhiana

...Respondent

APPEARANCES

For the workman	:	Shri B. N. Sehgal.
For the Management	:	None

AWARD

Passed on 22-2-2010

Government of India vide notification no.L-42012/67/2004-IR(CM-II), dated 15-4-2005, by exercising its powers under Section 10 of the Industrial Disputes Act, (the Act in short) has referred the following industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Advance Training Institute, Ludhiana in terminating the services of Shri Hardev Singh w.e.f. 29-11-2003 without any notice and payment of retrenchment compensation is legal and justified? If not, to what relief the workman is entitled and from which date?"

After receiving the reference, parties were summoned. Parties appeared and filed their respective pleadings. On perusal of the pleadings of the parties, it is evident that main controversy to be redressed and answered by this Tribunal is whether management is competent to issue several appointment letters to the workman for different periods with notional breaks, even if the work is regularly available? Consequently, this Tribunal has also to answer whether issuing such appointment letters amounting to the unlawful labour practice as claimed by the workman?

It is admitted fact that from 21-2-2003 to 28-11-03, 10 appointment letters were issued by the management to the workman. Every appointment letter was succeeded by a termination order. It is also apparent that there were notional breaks of one or two days in between the termination letters terminating the previous service and subsequent appointment letters.

The workman has challenged such practice as unlawful. On the other hands, the management has justified

this practice on the ground that every and each appointment letter constitute a different appointment and has no nexus with others. As soon as the term of one appointment letter was over, the service of the workman were automatically terminated. The management has specifically terminated the services by issuing the termination letters as well. It is further contended by the management that all these 10 appointment letters cannot be considered for the purpose of rendering the continuous services by the workman with the management.

All the appointment letters and termination letters are on record. I have heard the parties at length and perused all the materials and evidence oral and documentary on record. Hon'ble the Supreme Court in 2006 AIR SCW 2979, Haryana State Electronic Development Corporation Ltd. Vs. Mamni has decided this issue. In para no. 9 of the judgement Hon'ble the court held as under :—

“The respondent was appointed from time to time. Her services used to be terminated on the expiry of 89 days on regular basis. However, it is noticed that she used to be appointed after a gap of one or two days upon completion of each term. Such an action on the part of the Appellant cannot be said to be bona fide. The High Court rejected the contention raised on behalf of the appellant herein stating:

It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been disputed, reveals that the respondent workman was repeatedly engaged on 89 days basis. It is, therefore, clear that the intention of the management was not to engage the respondent workman for a specified period, as alleged, but was to defeat the right available to him under Section 25-F of the Act. The aforesaid practice at the hands of the petitioner-management to employ the workman repeatedly after a notional break, clearly falls within the ambit and scope of unfair labour practice.”

Thus, on the basis of the above observation and the settled principle of law in above mentioned case, I am of the view that if the work is available with the management and the workman is ready to work and the management has no problem with the work and conduct of the workman in that case issuing the different appointment letters for different periods amounted to unlawful labour practice because there has been only one intention behind issuing several appointment letters to prevent the workman for claiming the rightful claim under the provisions of the Act. The work was available with the management. Workman was satisfactorily working the work entrusted to him. There was no reason for issuing such 10 appointment letters for one month each. Accordingly, this practice is an unlawful labour practice.

The next issue is what will be consequences for issuing such appointments letters and the declaration of this Tribunal that this practice is unlawful. In my view, the

consequences will be that it shall be considered the continuous service rendered by the workman to the management. If it is considered, the workman has completed more than 240 days of work with the management. No notice or one month wages in lieu of the notice and legal terminal dues were given to the workman by the management before terminating his services.

It is specifically mentioned that declaring such practice as unlawful labour practice and also declaring the termination of the workman as unlawful and illegal does not confer any right on the workman to get his services regularized. This Tribunal cannot act as a selection board. It is within the domain of this Tribunal to protect the right to continuous work, if available with the management. It is not within the jurisdiction of this Tribunal to regularize the service of the workman. The appointment of the work was purely on ad hoc and temporary basis. It cannot be substituted with the regular appointment made by the management as per the procedure mentioned in the rules. Thus, reinstatement of the services of the workman will not be proper. The only remedy left is the reasonable compensation to the workman on account of his illegal termination from the services.

Whenever, the termination of any workman is declared to be null and void, there are two possible remedies available to the workman. The first remedy is reinstatement of the workman in to the services on the same position he was initially appointed and working with the bank. The second alternative remedy is a reasonable compensation. It is the settled law of service jurisprudence that priority should be given for reinstatement of the workman into the service and in exceptional cases, the Tribunal should remedied the workman with the compensation. When it is before the Tribunal that work is not available with the management or no post is lying vacant, the workman should be reasonably compensated. On going through entire materials on record, it is clear that no work at present is available with the Bank. Accordingly, reasonable compensation is the appropriate remedy for the workman. The compensation should be awarded on the basis of reasonable criteria. The facts to be considered as a reasonable criteria are the wages which the workman was getting at the time of the termination, one month wages in lieu of notice, lawful terminal dues, interest thereon, depreciation in the money, inflation and index cost factor. Considering the above factors and length of service of the workman, I am of the view that Rs. 75,000 will be a reasonable compensation to meets the end of justice. Considering all above factors and the period the workman has worked with the management and the wages he withdraw at the time of his retrenchment Rs. 75,000 in my view is a reasonable compensation. Accordingly the management is directed to pay/deposited the above mentioned compensation within one month from the date of publication of the award. If the management pays/deposits

the amount within one month from the date of publication of the award, no interest need to be paid failing which the workman will also be entitled for an interest at the rate of 8 percent per annum on the amount of compensation from the date of filing the statement of claim till final payment. Accordingly, the reference is answered. Let Central Government be approached for publication of award and thereafter, file be consigned to record room.

G.K.SHARMA, Presiding Officer

नई दिल्ली, 8 मार्च, 2010

का. आ. 875.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं एडवांस् ट्रेनिंग इन्स्टीट्यूट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय न. 1 चण्डीगढ़ के पंचाट (संदर्भ संख्या 121/2005 और 113/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-3-2010 को प्राप्त हुआ था।

[सं. एल-42012/159/2004-आई. आर. (सीएम-II)]

[सं. एल-42012/160/2004-आई. आर. (सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th March, 2010

S. O. 875.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 112/2005 & 113/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Advanced Training Institute, and their workman, which was received by the Central Government on 8-3-2010.

[No. L-42012/159/2004-IR(CM-II)]

[No. L-42012/160/2004-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I
CHANDIGARH.**

Case I.D. No. 112/2005 and 113/2005

- (1) Shri Bhoop Singh S/o Shri Ramesh Chand Sabjiwala,
Threkey Colony,
VPO Threkey,
Ludhiana.
- (2) Shri Sukhviri Singh S/o Shri Surjit Singh
C/o Shri Karamvir Singh,
Walia Lab., Mint Gumri Chowk,
627, Model Town,
Ludhiana.

...Applicant

VERSUS

The Director, Advanced Training Institute, Govt. of India, Ministry of Labour (DGE&T), Gill Road, Ludhiana.

... Respondent

APPEARANCES

For the workman: Shri B.N. Sehgal.

For the Management: None

AWARD

Passed on:- 22-2-2010

This award shall dispose of two industrial disputes and references namely ID No. 112/2005, Shri Bhoop Singh Vs. Advanced Training Institute and ID No. 113/2005, Shri Sukhviri Singh Vs. Advanced Training Institute. Common questions of law and facts are involve in both of the references, hence both references are adjudicated and answered by this common award.

The references referred by Central Government in both of industrial disputes are as follows:—

(1) In ID no, 112/2005, Ref. No. 42012/159/2004 [IR(CM-II)], dated 27-6-2005, Whether the action of the management of Advance Training Institute, Ludhiana in terminating the services of Shri Bhoop Singh w.e.f. 28-11-2003 is legal and justified? If not, to what relief the concerned workmen is entitled to and from which date?

(2) In ID no. 113/2005, Ref. no. 42012/160/2004 [IR(CM-II)], dated 27-6-2005, Whether the action of the management of Advanced Training Institute Ludhiana in terminating the services of Shri Sukhviri Singh w.e.f. 29-11-2003 is legal and justified? If not, to what relief the concerned workman is entitled to and from which date?

In both of the references, it is the contention of each workmen that they were appointed by the management as Safai Karamchahi w.e.f. 17-12-2002 in the pay-scale of Rs. 2250-55-2650-60-3200 plus admissible allowances as per applicable to the Central Government employees. The names of the workmen were sponsored by employment exchange. They were also ordered to under go a medical test and to provide the medical certificate before joining the same. The services of both of the workmen were terminated on 28-11-2003. It has also been contended by both of the workmen that their juniors were retained in the services and after the termination on their services fresh hands were recruited without affording the opportunity to them. On the basis of the above contentions, every workmen has requested for setting aside the termination order being against the provisions of the Act and for a consequential order reinstating the services of each workmen along with all consequential benefits.

The management appeared and contested the claim of each workmen by filing written statement. It is admitted to the management that each workmen was appointed on ad hoc basis for one year/or till the post is filling up on

regular basis, whichever is earlier, subject to the terms and conditions mentioned in the appointment letter. It is contended by the management that appointment given to the each workmen was temporary and ad hoc in the nature. As per the terms and conditions, the workmen could have been terminated at any time without notice or assigning any reasons.

Parties were afforded the opportunity for adducing evidence. I have heard the parties at length. I have also perused the evidence oral and documentary on record. The issue before this Tribunal is whether the appointment letter issued to each workmen on 17-12-2002 and their termination almost after one month, violates any terms and conditions of the appointment letter? The question before this Tribunal for discussion also is whether such termination amounted to unlawful labour practice?

Each workmen in very garlanding words has stated in pleadings and affidavits that their juniors were retained in the services and fresh hands were recruited after the termination of thier services without disclosing the name of any juniors retained in service or the name of the person who was recruited after the termination of their services. It is the duty of the workmen to prove before this Tribunal that fresh hands were recruited after their termination and juniors were retained in the services. There is no lota of evidence on record to prove above mentioned facts. As stated earlier, in very garlanding words, every workman has pleaded in plain words without any proof. There is a difference in pleaded fact and proving the same. The name of juniors or fresh recruits, their date of appointment, place of work and station where they are residing has not been given and proved by any of the workmen.

Admittedly, every workmen was provided with the services vide appointment letter dated 17-12-2002 which provides that it is the ad hoc appointment for one year/till the regular appointment/promotion/confirmation etc. There are certain other terms and conditions mentioned in the appointment letter. On perusal of the appointment letter, it is evidently clear that the appointment of the workmen was on the basis of the following conditions :—

- (1) The appointment was purely ad hoc in nature?
- (2) It was only for one year/till the post is filled up on regular basis.
- (3) The services were likely to be terminated at any time without assigning any reasons.

Thus, the appointment letter provides the management an opportunity to terminate the services of the workmen without assigning any reasons even within one year as prescribed by the appointment letter. If the instrument (appointment letter) permits the management to terminate the services without assigning any reasons within a particular period, the right of the management to terminate the services cannot be curtailed unless the

termination order has any stigma on the terminated workmen. It is the settled principle of service jurisprudence that during ad hoc services of temporary nature for a fixed term or during the probation, the services of the workmen can be summarily terminated without assigning any reasons. But if the termination order leads to the discovery of any fact which has any stigma on the workmen, it is mandatory to afford the workman opportunity of being heard on the misconduct which leads this stigma. It is not the case in these references. The services have been terminated plainly without assigning any reasons. The pleadings of the workmen and the evidence filed by them does not disclose any stigma on them. Thus, the management was competent to terminate the services of the workmen during the ad hoc period without assigning any reason and this power of the management in terminating the services of the workman just after one month cannot be questioned before this Tribunal. I am also of the view that such termination does not amount to unlawful labour practice. Workman Shri Sukhbir Singh filed a certificate provided with by the management which shows that prior to his appointment on ad hoc basis he has not served with the management. This issue has not been raised by the workman before this Tribunal. He has simply challenged his termination order from the services which were provided with to him vide order dated 17-12-2002. Thus, in absence of reference and pleadings it is not possible for this Tribunal to discuss the services rendered by the workman Shri Sukhbir Singh before his ad hoc appointment vide letter dated 17-12-2002.

On the basis of the above observation, I am of the view that management was competent in terminating the services of the workmen during the period mentioned in appointment letters without assigning any reasons. The services of the workmen were terminated without assigning any reasons which does not constitute any stigma on the workmen. Both of the workmen accordingly, are not entitled for any relief as there is no illegality in their termination order. Both of the references are accordingly disposed off and answered. Let Central Government be approached for publication of award, and thereafter, file be consigned to record room.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 8 मार्च, 2010

का. आ. 876.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-1 चण्डीगढ़ के पंचाट (संदर्भ संख्या 49/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-3-2010 को प्राप्त हुआ था।

[सं. एल-12012/251/2005-आई आर(वी-1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 8th March, 2010

S. O. 876.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 49/2006) of the Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh now as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workman, which was received by the Central Government on 8-03-2010.

[No. L-12012/251/2005-IR(B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-
I, CHANDIGARH**

I.D. No.49/2006

Shri Azad Singh

C/o Shri J.B. Garg, Asstt. General Secretary, SBI Staff Association, H. No. 198/34, Rakesh Nagar, Janata Colony, Rohtak.

...Applicant

VERSUS

The Asstt. General Manager, State Bank of India, Region-III, Zonal Office, Panchkula (Haryana).

... Respondent

APPEARANCES

For the workman : None
For the management : Shri V. K. Sharma.

AWARD

Passed on 8-2-2010

Government of India vide notification No. L-12012/251/2005 (IR(B-I)), dated 1-8-2006, by exercising its powers under Section 10 of the Industrial Dispute Act, (the Act in short) has referred the following industrial dispute for adjudication to this Tribunal:—

“Whether the action of the management of State Bank of India in bringing down the Workman Sh. Azad Singh, Godown Keeper-cum-Cashier the lower stage in scale of pay two stage is just and legal? If not, to what relief the workman is entitled to?”

2. Case respectfully called. None appeared on behalf of the workman despite repeated calls. On perusal of the record, it reveals that none is appearing on behalf of the workman for the last several dates. It appears that workman is not interested to pursue with the present reference. In view of the above, the claim in the present reference is returned to the Central Government for want of

prosecution. Central Government be informed. File be consigned.

Chandigarh.
8-2-2010

G. K. SHARMA, Presiding Officer

नई दिल्ली, 8 मार्च, 2010

का. आ. 877.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 11/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-3-2010 को प्राप्त हुआ था।

[सं. एल-12012/168/2006-आई आर(बी-1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 8th March, 2010

S. O. 877.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2007) of the Central Government Industrial Tribunal-cum-Labour Court-I, Delhi now as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workman, which was received by the Central Government on 8-03-2010.

[No. L-12012/168/2006-IR(B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,
NO. 1, KARKARADOOMA COURTS COMPLEX,
DELHI**

I.D. NO. 11/2007

Shri Ranvir Singh through General Secretary,
Shri Bank of India Staff Association,
13th Floor, State Bank of India, Local Head Office,
11, Sansad Marg, New Delhi-110001. ... Workman

Versus

The General Manager-II,
State Bank of India,
Local Head Office,
11, Sansad Marg, New Delhi.

... Management

AWARD

While working as Assistant at Chhare branch of State Bank of India, Ranvir Singh committed acts of fraud, falsification of record and cheating. A sum of Rs. 187500/- was involved in that incident. Though the incident of cheating, falsification of account and fraud was committed

on 10th of March, 89, yet it came to light in February, 1993. A charge sheet was served upon Ranvir Singh on 11-1-95, which was replied by him on 21-1-95. Subsequently an amended charge sheet was served upon him on 17-2-97, which was also replied by him on 7-8-97. Not satisfied with his replies the bank decided to initiate a domestic enquiry and Shri R.C. Aggarwal was appointed Enquiry Officer vide order dated 19-3-98. Shri K.C. Dogra was appointed as Presenting Officer. Domestic Enquiry was conducted. The Disciplinary Authority awarded punishment of reduction of Ranvir Singh in the scale by two stages. His appeal came to be dismissed. Ranvir Singh raised the matter before the SBI Staff Association, who raised the dispute before the Conciliation Officer. When conciliation proceedings failed appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-12012/168/2006-IR(B-II), New Delhi, dated 2-2-2007, with the following terms:-

“Whether the action of the management of State Bank of India, Agra Module imposing the punishment of bringing two stage down in the scale of wages on Shri Ranvir Singh, Assistant, State Bank of India, Bah, Distt. Agra is justified? If not, to what relief the workman is entitled to?”

2. Claim statement was filed by Shri V.K. Gupta, General Secretary, State Bank of India Staff Association pleading therein that Ranvir Singh was working at Bah branch of the management bank on 11-1-95, when a charge sheet was served upon him. Amended charge sheet was served upon him on 17-7-97. An enquiry was conducted. The Enquiry Officer failed to act honestly and judiciously. He recorded his report, which was not supported by any evidence. The Disciplinary Authority was unfair. He passed punishment of bringing salary of Ranvir Singh down by two stages in the time scale, under pressure of vigilance department of the bank. Appeal was preferred, which was also dismissed in a mechanical manner. The action of the management is arbitrary, unfair, unjust and illegal. It deserves to be set aside. It was claimed that punishment awarded to Ranvir Singh may be declared null and void and management bank may be directed to release his increments with retrospective effect.

3. Contest was given to the claim statement pleading that Ranvir Singh perpetrated fraud on the bank, wherein a sum of Rs. 187500 were involved. The fraud came to light in February, 93. He was served with a charge sheet on 11-1-95 which was replied by him on 21st of January, 95. When dimensions of fraud came over the record an amended charge sheet was served upon him on 7-7-97, which was replied on 7-8-97. Vide order dated 19-3-90, Shri R.C. Aggarwal was appointed as Enquiry Officer and K.C. Dogra was appointed as Presenting Officer. The enquiry commenced on 16-5-98 and it was concluded on 8-1-2001. Shri V.K. Gupta represented the claimant in the capacity of defence representative. Shri K.B. Saxena, R.S. Mathur and B.S. Takola were examined on behalf of the bank before the Enquiry Officer. and J. P. Chandwaria was examined by the claimant in his evidence. Enquiry Officer submitted his

report dated 16-4-2001. Enquiry was conducted in consonance with the principles of natural justice. Punishment was commensurate to his misconduct. His appeal came to be dismissed. There is no substance in the claim statement and it may be dismissed.

4. On pleadings of the parties following issues were settled:

1. Whether the enquiry conducted by the management was fair, just and proper?
2. As in terms of reference?
3. Relief.

5. Despite notice sent to the claimant through registered post none opted to put in appearance on his behalf. Tribunal was constrained to proceed under rule 22 of Industrial Disputes (Central) Rules 1957. Shri R.C. Aggarwal and Yogesh Kumar Bansal were examined on behalf of the management.

6. Shri V.K. Gupta, Law Officer, argued facts on behalf of the management. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

Issue No.1

7. Shri R.C. Aggarwal testified that in March, 95 he was posted as Branch Manager, State Bank of India, Balkeshwar Colony, Agra. Ranvir Singh was posted at Chhara branch of the bank, in district Aligarh, UP, at that time. He was appointed Enquiry Officer vide order Ex. MW/1. He sent a notice to Ranvir Singh to join enquiry proceeding before him on 25-4-98. He appeared alongwith V.K. Gupta, his defence representative. Since Presenting Officer was not present the proceedings were adjourned for 16-5-98. On 16-5-98 he explained charges and Shri Ranvir Singh denied those charges. Proceedings were adjourned for 17-6-98 on that day. Shri R.S. Pal and B.S. Takola were examined on behalf of the management. Enquiry was adjourned for 11-7-98. Since defence representative was not present that day, enquiry was adjourned to 20-7-98. On that day no witness was present, hence enquiry proceeding were adjourned for 3-8-98. Since Presenting Officer was absent that day, enquiry proceeding were adjourned to 13-8-98. On 13-8-98 defence representative was not present, hence proceeding were adjourned to 21-8-98. On that date no witness was present, hence proceeding were adjourned to 28-9-98. On 28-8-98 Shri K.B. Saxena was examined. His testimony remained incomplete, which was concluded on 7-12-98. Since Shri Gupta, defence representative, demanded certain documents for the purpose of cross-examination of Shri Saxena proceedings were adjourned to 5-9-99. On 5-2-99 neither defence representative nor presenting officer was present. Hence proceeding were adjourned to 15-2-99. On 15-2-99 documents were supplied and the matter was adjourned to 21-6-99. Proceedings were again adjourned to 6-7-99. Proceedings were again adjourned to 6-7-99,

22-7-99, 27-7-99, 21-8-99 and 4-9-99. On 4-9-99 cross examination of Shri Saxena could not be concluded and proceeding were adjourned to 27-9-99. On 27-9-99 cross examination of Shri Saxena was recorded in part. Shri Gupta again raised a demand for supply of certain documents and proceeding were adjourned to 4-10-99 and 21-10-99. On that date bank representative refused to supply documents claiming it to be privileged. Proceeding were adjourned to 12-11-99 and lastly to 15-1-2000. Since Shri Saxena was not present proceeding were adjourned to 14-2-2000, on which date his cross examination was recorded in part. Proceeding were adjourned to 8-3-2000 and to 13-4-2000. On 13-4-2000 cross examination of Shri Saxena concluded. Presenting Officer closed the evidence and proceedings were adjourned to 28-4-2000.

8. He went on to depose that on 28-4-2000 proceedings were adjourned to 19-5-2000 and lastly to 19-6-2000. Shri J.P. Chandwaria was examined on behalf of the claimant. He was declared hostile and was cross examined on behalf of the workman. Proceeding were adjourned to 29-8-2000, on which date he was cross examined by the defence representative. Proceeding was adjourned to 11-9-2000, 28-9-2000 and 16-10-2000. On 16-10-2000 Ranvir Singh examined himself in his defence. Proceeding was adjourned to 13-11-2000 and 11-12-2000, on which date Shri Takola was summoned for further cross examination, whose further cross examination was done. Cross examination of Shri Ranvir Singh was concluded on 8-1-2001. Defence representative closed his evidence. Parties submitted their written submission and he gave his report on 16-4-2001, copy of which is Ex.MW1/2. By way of court question Shri R.C. Aggarwal was called upon to explain as to what was the documents which was treated by the Presenting Officer as privileged. In an answer to that proposition he projected that it was an enquiry report in the misconduct of Shri K. B. Saxena. He explained that he had not considered that report as relevant to the proceedings.

9. When facts unfolded by Shri R.C. Aggarwal were closely perused it came to light that except a document which was treated as privileged, all documents were supplied to the charge sheet employee. When charges were examined, he pleaded not guilty to those charges. He was given ample opportunity to cross examine the witness of the management. Thereafter opportunity was given to him to examine himself as well as his witness in defence. His submissions were also heard and considered. Therefore, it is emerging over the record that sufficient opportunities were given to the claimant to defend himself before the Enquiry Officer. Nothing came over the record to suggest that the enquiry officer was biased, personally or professionally, against the claimant. Shri Aggarwal was an independent person who considered the matter in consonance with the principles of natural justice and gave his report Ex.MW1/2. When report Ex.MW1/2 was perused, it came to light that findings were recorded by Shri Aggarwal on the basis of evidence produced before him. The said report cannot be called perverse.

10. Shri Yogesh Kumar Bansal testified that the letter dated 16-8-02, copy of which is Ex.MW2/1 was served upon the claimant by the Disciplinary Authority. Thereafter the Disciplinary Authority passed punishment vide order Ex.MW1/2. Appeal filed by him was dismissed vide order Ex.MW2/3. Out of facts presented by Shri Bansal it came to light that a show cause notice was served upon the claimant and thereafter punishment was awarded to him. The Disciplinary Authority followed the principles of natural justice, while awarding punishment to the claimant. Claimant could not disprove facts presented by Shri Aggarwal as well as Shri Yogesh Kumar Bansal. When these facts were considered it emerged over the record that the enquiry conducted by the management was fair, just and proper. Issue is, therefore, answered in favour of the management and against the workman.

Issue No.2

11. Right of an employer to inflict punishment is not unfettered. The punishment imposed must be commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of Section 11-A of the Industrial Disputes Act, 1947 (in short the Act), it was not open to the industrial adjudicator to vary the order of punishment on finding that order of dismissal was too severe and was not commensurate with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had, however, laid down in *Bengal Bhattee Coal Company* [1963 (1) I.L.J. 291] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of Section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

12. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in

like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in Hind Construction and Engineering Company Ltd. [1965(1) LLJ 462]. Likewise in Management of the Federation of Indian Chambers of Commerce and Industry [1971 (11) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In Ram Kishan [1996(1) LLJ 982] the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts".

13. In B.M. Patil [1996(11) LLJ 536], Justice Mohan Kumar of Karnataka High Court observed that in exercise of discretion, the Disciplinary Authority should not act like a robot and justice should be moulded with humanism and understanding. It has to assess each case on its own merit and each set of fact should be decided with reference to the evidence regarding the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

14. After insertion of Section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer is commensurate with the gravity of the act of misconduct. If it comes to the conclusion that misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstances of the case may warrant. Reference can be made to a precedent in Sanatak Singh (1984 Lab. I.C. 817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to

the degree of the guilt of the workman. Reference can be made to the precedent in Kachraji Motiji Parmar [1994 (11) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, Section 11A of the Act specifically gives two folds power to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

15. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untrammelled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, beside length of service rendered by him. Further more, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference cannot be made to the precedent in Bhagirath Mal Rainwa [1995(1) LLJ 960].

16. Acts of dishonesty and fraud constitute misconduct of serious nature warranting serious punishment. It is a grave misconduct on the part of the employee holding respectable position, whose duty is to keep and maintain proper ledger and record of the bank. Therefore, such an employee is to be punished suitably. While considering the conduct of the workman, he was awarded punishment of reduction by two stages in the time scale. Punishment awarded to him was commensurate to his misconduct. Therefore, I do not find any reason to interfere with the punishment. The workman is not entitled to any relief. Issue is, therefore, answered in favour of the management and against the workman.

Relief.

17. In view of the foregoing discussion it is evident that the management has been able to establish that punishment awarded to the workman was commensurate to his misconduct. Claim petition is liable to be dismissed. Rejecting claim statement filed of the workman, an award is passed. It be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer

Dated 12-2-2010.

नई दिल्ली, 10 मार्च, 2010

SCHEDULE

का.आ. 878.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सी.सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिभारण, श्रम न्यायालय सं.-1, धनबाद के पंचाट (संदर्भ संख्या 33/90) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-3-2010 को प्राप्त हुआ था।

[सं. एल-20012/206/89-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 10th March, 2010

S.O. 878.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 33/90) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. C.C.L. and their workman, which was received by the Central Government on 10-3-2010.

[No. L-20012/206/89-IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No. 1, DHANBAD

Present : Shri H. M. Singh, Presiding Officer

In the matter of an Industrial Dispute U/s. 10 (1) (d) of
the I. D. Act, 1947.

Reference No. 33 of 1990

Parties: Employers in relation to the management of
Central Coalfields Ltd. and their workman.

APPEARANCES

On behalf of the workman : None

On behalf of the employers : None

State : Jharkhand. Industry : Coal

Dated, Dhanbad, 22-2-2010

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10 (1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/206/89-IR (Coal-I) dated 15th February, 1990.

“Whether the action of the management i.e. General Manager (H), C.C.L. Charhi, At & P.O. Charhi, Dist. Hazaribagh by not reinstating the service of Sri Sukar Ganjhu, Bus Khalasi w.e.f. 12-11-86 and not making payment of balance amount of his wages for the suspension period from 12-11-86 to 11-2-88 is justified? If not, to what relief the workman concerned entitled?”

2. The case of the concerned workman as disclosed in his Written Statement is that he was working as Bus Khalasi under the management and while working under the management he was issued with a chargesheet dated 10-11-86 containing false and frivolous charges. The concerned workman submitted his reply in which he explained the facts and circumstances of the case and clarified the position in detail. Being not satisfied with the reply of the chargesheet management conducted a departmental enquiry violating the principles of natural justice. It has been alleged by the concerned workman that his case was jeopardised as he was not allowed to be assisted by a co-worker of his choice in the departmental enquiry. It has further been alleged that the findings of the enquiry officer is perverse and based on the findings of the enquiry officer the concerned workman was dismissed w.e.f. 11-2-88 in an unjustified manner.

3. It has been stated further by the concerned workman that while passing dismissal order management did not apply its own mind and the concerned workman was not paid full wages etc. for the period of suspension while awarding the punishment of dismissal. In view of the above facts it has been prayed on behalf of the concerned workman to pass an Award directing the management to reinstate the concerned workman in service from the date of dismissal order and to make payment of balance amount of his wages for the period of suspension.

3. In the Written Statement it has been stated by the management that the Reference is bad in law and not maintainable and that it is liable to be struck down. It has been further stated by the management that as per Model Standing Orders applicable to this Establishment in Coal Mines, no wages are payable to a workman who has been suspended pending enquiry and who has been found guilty.

4. The management have further stated that the concerned workman was working as a Bus Khalasi at the office of the General Manager, Hazaribagh Area. At the relevant time, the duty of Sri Sukar Ganjhu was on School Bus. There was a regular Driver attached to the School Bus in question (No. BRN 8064) and it was his duty to drive the school Bus. The concerned workman was required to function as a Khalasi. He was not at all required to drive the School Bus and in fact he had no driving license for

driving such a School Bus. It has been stated by the management that driving of a vehicle by a person without valid license is a punishable offence under the Motor Vehicle Act. The driving of a School Bus by a person not holding a valid driving license could not only lead to the damage to the School Bus but also to the property of other persons and lives of other persons also. The matter involved in this case is, therefore, extremely serious.

5. Accordingly a chargesheet was issued to the concerned workman to which he submitted his explanation admitting that he had taken the School Bus in question from the compound of the office of the GM Hazaribagh on 8-11-86 and caused an accident. The management being not satisfied with his reply held a departmental enquiry in which he was found guilty of the charges. In the departmental enquiry he was given full opportunity to take assistance of his co-worker and to cross-examine the management witnesses. The enquiry Officer submitted his report to the higher authority and the higher authority in their turn passed dismissal order which was issued on 8/10-2-88. Accordingly the concerned workman was dismissed from service w.e.f. 11-2-1988.

6. Management have further submitted that according to the Model Standing Orders applicable to the establishments in Coal Mines, a worker who has been suspended pending enquiry and who has been found guilty in the enquiry, is not entitled to anything more than what was paid to him for the period of suspension from 12-11-86 to 10-2-88 or any so called balance amount of his wages.

In view of the facts as disclosed above it has been prayed on behalf of the management to pass an Award rejecting the claim of the concerned workman.

7. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paras of each other's Written Statement.

8. The domestic enquiry was held fair and proper by an Order dated 17-7-92. Thereafter the case was heard on merit. Notices were issued to the parties on 26-6-2009 for hearing argument on 12-8-2009. But none of the parties have appeared though Written argument has been filed.

9. Perused the record. As per claim made by the concerned workman he should get salary during his suspension period from 12-11-86 to 11-2-88. In this respect management have stated that he was suspended during that period so no wages except subsistence allowance was paid. Written argument has been filed on behalf of the management on 19-2-97. The concerned workman has demanded wages from 12-11-86 to 11-2-88 during the period while he was suspended for negligence of his duties. He was posted as Khalasi of the Bus and he was driving School Bus No. BRN 8064 which was not his duty and he caused accident by killing one contractor's worker at 11.30 A.M.

on 8-11-86 at Tapin South Colliery Security Gate though he was absent from 7-11-86 to 8-11-86 and he had taken the Bus on false statement to the Security Guard without obtaining any permission from the competent authority. The concerned workman submitted his explanation and he has admitted the fact that he has taken the Bus in question from the compound of the office of the G.M. at Hazaribagh on the date of accident. He was dismissed from 11-2-88. The concerned workman drove the vehicle without having any valid driving license and caused accident killing one person though he was absent from duty and without any permission he has taken the Bus. The enquiry was found fair and proper. It shows that he is not entitled for any payment from 12-11-86 to 11-2-88 and his demand is not justified. Moreover, he is not also entitled for reinstatement as back from 12-11-86 as he has admitted his guilt in his explanation to the chargesheet. In the result, the following Award is rendered :-

"The action of the management i.e. General Manager (H), C.C.L Charhi, At & P.O. Charhi, Dist. Hazaribagh by not re-instating the service of Sri Sukar Ganju, Bus Khalasi w.e.f. 12-11-86 and not making payment of balance amount of his wages for the suspension period from 12-11-86 to 11-2-88 is justified. Consequently, the concerned workman is not entitled to get any relief."

H. M. SINGH, Presiding Officer

नई दिल्ली, 10 मार्च, 2010

का.आ. 879.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स टिसको के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्रम न्यायालय सं.1, धनबाद के पंचाट (संदर्भ संख्या 196/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-3-10 को प्राप्त हुआ था।

[सं. एल-20012/29/2000-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 10th March, 2010

S.O. 879.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 196/2000) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Tisco and their workmen, which was received by the Central Government on 10-3-10.

[No.1-20012/29/2000-IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No. 1, DHANBAD**

In the matter of a reference U/s. 10 (1) (d) (2A) of the
Industrial Disputes Act, 1947.

Reference No. 196 of 2000

Parties: Employers in relation to the management of
Malkera Colliery of M/s. TISCO

AND

Their workmen

Present : Shri H. M. Singh, Presiding Officer

APPEARANCES

For the employers : Shri D. K. Verma, Advocate

For the workmen : Shri H. P. Gond, Advocate.

State : Jharkhand

Industry : Coal

Dated, the 24th February, 2010

AWARD

By Order No. L-20012/29/2000 (C-I) dated 29-6-2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Malkera Colliery, of M/s. TISCO in denying employment on compassionate ground to Smt. Chitra Devi, W/o Late Top Bahadur Rana, Ex-Security Guard is justified? If not, to what relief is the dependent wife of late Top Bahadur Rana entitled?”

2. Written statement has been filed on behalf of Smt. Chitra Devi stating therein that the petitioner is the widow as well as sole dependent of the workman late Top Bahadur Rana, Security Guard, posted at Tisco's Malkera Colliery. Top Bahadur Rana expired on 7-8-1990 in the life time of his service after completion of 20 years and 9 months blameless service. He was appointed on 1-8-1969. The petitioner's position as wife/sole dependent has been accepted by the management authority of TISCO vide letter Ref. No. SD/35/90/86 dated 6-2-86 and accepted the husband Top Bahadur Rana's application dated 23-12-85 the aforesaid management has sympathically considered appointed the petitioner as Cat. I Kamin w.e.f. 5-2-86 for the duration of her husband's illness but not more than 18 months. As such, it is clear that the name of the petitioner is enrolled in the E.D.P. of Top Bahadur Rana. As per order dated 6-2-86 the petitioner resumed duty under M/s. TISCO

are performed 11 months duty, thereafter her husband became fit for resuming his duty. As per provision/circular of TISCO, Employment procedure it is clear that the petitioner comes in the perview of the provision and this is genuine one. After the death of Top Bahadur Rana, the petitioner applied for the post death benefits as well as an appointment on the compassionate ground to maintain her family although the management released the post death benefits of her deceased husband but the claim of employment was rejected by the order dated 2-12-96.

It has been prayed before this Hon'ble Tribunal to pleased decide the matter and pass such order as it may deem fit and proper.

3. Written statement has been filed by the management the present reference is not legally maintainable as there is no employer - employees relationship between the management and the concerned lady. It has been submitted that one workman named Top Bahadur Rana was appointed on 1-8-69 and he expired on 8-5-90 after completion of 20 years and 9 months of service. As per the company's procedure for employment of dependents of workmen, each and every workman is eligible for getting his dependents enrolled in the Employees' Dependent Register, after completion of 15 years of service. As per the definition of dependents, the son, younger brother and son-in-law who are dependents on the earnings of the employee are eligible to be enrolled as dependents of that employee. No female dependent becomes eligible for enrolment in the employees' dependent register as because the management is having only underground mines and no female worker can be deployed inside the mine as per the provisions of Mines Act, 1952. since Top Bahadur Rana was not having any male dependent, he did not get the name of any of them enrolled in the employees' dependent register. After the death of the aforesaid workman, no application was filed for employment of dependent in place of that workman and the concerned lady as well as the recognised union were fully aware of such a situation and thus did not demand for employment of any dependent or for enrolment of any dependent in the employees' dependent register. The concerned lady has raised the dispute for providing her employment more than 7 years after the death of her husband under the instigation of some interested persons.

It has been prayed that this Hon'ble Tribunal be pleased to pass the award holding that the concerned lady is not entitled to any relief.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The management has produced MW-1- Dinesh Kumar Sharma who has proved documents, marked Exts. M-1 to M-7.

The concerned lady has produced herself as WW-1, Chitra Devi.

6. Main argument advanced on behalf of the concerned lady is that her husband, Top Bahadur Rana, Security Guard of the management having Ticket No. 4525, Personal No. 206057. He was suffering from T.B. and he was unable to perform the job of TISCO. Then he preferred an application before the management of TISCO to provide a job to his wife Chitra Devi in his place to maintain his family. Considering his application dated 23-12-85 the management of TISCO provided 18 months job as a Category - I Kamin w.e.f. 5 to 6, and as per order dated 5-2-86 vide Ref. SD/35/90/86 the dependent Chitra Devi, wife of Top Bahadur Rana, resumed her duties under M/s. TISCO and performed 11 months duties, thereafter her husband became fit for resuming his duty and the management again provided duty to Top Bahadur Rana. Top Bahadur Rana expired on 7-8-1990 after completion of 20 years and 9 months service. Top Bahadur was appointed on 1-8-1969. After the death of Top Bahadur Rana the sole dependent Smt. Chitra Devi applied for the post death benefits as well as made application for a suitable job on compassionate ground to maintain her family. Although the management released the post death benefits of her deceased husband, Top Bahadur Rana but claim of appointment was rejected by order dated 2-12-96. It has been argued on behalf of the workman in respect of this, that in the Reference No. 206/98 between M/s. TISCO and Madhuri Devi, the Hon'ble Central Govt. Industrial Tribunal No. 2, Dhanbad passed an award in favour of the concerned workman, Madhuri Devi. The present case also stands on the same footing.

7. Management's counsel argued that there is no provision for giving employment to female workers because they have to work in underground. It was informed that wife is not included in the definition of dependents for the purpose of employment on strength of service. It has also been argued that the Central Govt. Industrial Tribunal No. 2, Dhanbad passed awards in Reference No. 88/84 and Reference No. 172/91 as per Exts. M-6 and M 6/1 holding that the female worker cannot be given employment with the management.

Another argument advanced on behalf of the management that the present dispute was raised by the union after lapse of seven years. Hon'ble in catena of cases held that the demand of compassionate appointment cannot be considered after lapse of several years. In this respect the judgement of Hon'ble Supreme Court reported in 2003 SCC (IAS) page 248 has been referred, in which Hon'ble Court held - "The main object of granting Compassionate appointment, held, is to provide immediate relief to the deceased employee's family - Moreover, such appointment cannot be granted in the absence of rules or

instructions issued by the Government or any public authority- Hence, where at the time of death of a work-charged employee of state Electricity Board there was no rule or scheme for such appointment, although such a scheme was framed about one year later, and the application seeking compassionate appointment of the deceased's son was made still seven long years later, held, High Court erred in directing the Board to give employment to deceased's son.

8. The concerned lady, WW-1, in her cross-examination has stated that "I have got no son. I have four daughters. When my husband completed 15 years of employment he did not get the name of any daughters registered for dependent employment. As per company's agreement with the union dated 16-3-94 (Ext.M-4) in clause (6) at page 3, it was informed that wife is not included in the definition of dependents for the purpose of employment on the strength of service. So, the concerned lady is not entitled to get employment on compassionate ground and as per Ext. M-6, the Central Govt. Industrial Tribunal No. 2, Dhanbad, in Reference No. 88/84 held that the dependent is not entitled to get employment on compassionate ground or on permanently disabled and as per Reference No. 114/86 (Ext.M-6/1) decided by Central Govt. Industrial Tribunal No.2, Dhanbad in which it has been held that the dependent wife of late Keshri Prasad Tiwary is not entitled for employment.

9. Learned representative of the workman referred the judgement of Hon'ble Jharkhand High Court in which Hon'ble High Court upheld the award dated 11-6-2004 passed by the Central Govt. Industrial Tribunal No. 2, Dhanbad in Reference No. 206/98 whereby he has answered the reference in favour of the concerned workman. The fact of the case is not before this Tribunal, so that it can be considered for giving employment to the concerned lady.

10. As there is no provision for giving employment to the dependent female worker of deceased employee, so the concerned lady cannot be given employment by the management.

Moreover, demand has been made by the concerned lady for getting employment after lapse of about seven years. The name of the concerned lady has not been mentioned in the employment Dependent Register.

11. In the result, I hold that the action of the management of Malkera Colliery of M/s. Tisco in denying employment on compassionate ground to Smt. Chitra Devi, W/o Late Top Bahadur Rana, Ex-security Guard is justified and the dependent wife of late Top Bahadur Rana is not entitled to any relief.

This is my award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 10 मार्च, 2010

का.आ. 880.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी. सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्रम न्यायालय सं.-1, धनबाद के पंचाट (संदर्भ संख्या 62/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-3-2010 को प्राप्त हुआ था।

[सं. एल-20012/403/98-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 10th March, 2010

S.O. 880.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 62/99) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 10-3-2010.

[No. L-20012/403/98-IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No. 1, DHANBAD**

In the matter of a reference U/s. 10 (1) (d) (2A) of
Industrial Disputes Act, 1947.

Reference No. 62 of 1999

Parties: Employers in relation to the management of
Central Hospital of M/s. B. C. C. L.

AND

Their workmen

Present : Shri H. M. Singh, Presiding Officer

APPEARANCES

For the employers : Shri D. K. Verma, Advocate

For the workman : Shri J. N. Das, Advocate

State : Jharkhand

Industry : Hospital

Dated, the 25th February, 2010

AWARD

By Order No. L-20012/403/98-IR (C-1) dated 17-4-99 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of

sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Central Hospital, M/s. BCCL, Dhanbad in not allowing to Mrs. M. Joseph & 29 others (as per list) to avail the 18 days Gazetted Holidays and 8 days Holidays at par with the Central Government Employees per Annum is justified? If not, to what relief these para-medical employees are entitled to?”

2. Written statement has been filed on behalf of the concerned workmen stating that Mrs. M. Joseph and 29 other concerned workmen were originally appointed by the Central Government at Central Hospital, Dhanbad and since then they have been working there continuously to the satisfaction of the management and with unblemished record of service. The Central Hospital was taken over by M/s. BCCL in the year 1984 and it was merged with BCCL. After taking over of the Central Hospital by M/s. BCCL the employees of M/s. BCCL were asked to exercise the option and accordingly M/s. BCCL issued three options and asked the employees to choose the same. The first option was to accept the service condition and pay scale of BCCL, second option was to accept the service condition of BCCL and pay scale of Central Government and third option was to retain the Central Government employment, pay scale and other benefits. The concerned workmen accepted the third option and accordingly they filled up the option form. Prior to merger of Central Hospital of BCCL the aforesaid para medical staff were enjoying 18 days Gazetted holidays and 8 days holidays as Central Govt. employees. After merger the management all on a sudden changed the service conditions and stopped the facilities of 18 days Gazetted holidays and 8 days holidays at par with Central Government employees as they were enjoying prior to merger. The management illegally and arbitrarily forced the concerned workmen to work on Gazetted holidays and on holidays and thereby they acted illegally and against the principles of natural justice. The management only allowed the concerned to avail the Gazetted holidays and holidays as are available to the employees of M/s. BCCL. The concerned workmen and the union represented before the management several times but without any effect. Thereafter an industrial dispute was raised before the A.L.C. (C), Dhanbad, which ended in failure due to adamant attitude of the management.

It has been prayed this Tribunal to answer the reference in favour of the workman by directing the management to pay the concerned workman their full back wages and other attendant benefits for forcing them to work on Gazetted holidays and other holidays from 1984 till date and directing the management to allow them 18 days Gazetted holidays and 8 days holidays per year.

3. Written statement has been filed by the management stating there that the concerned workman were the employees of the Coal Mines Labour welfare organisation. The said Coal mines Labour Welfare Organisation was abolished by the Coal mines Welfare Fund (Repeal) Act, 1986 and in pursuance of Order No. 11021/6/86-CSW dated 22-9-1986 of the Department of Coal Ministry of Energy, Government of India, all institutions of Coal mines Labour Welfare organisation were transferred to the subsidiaries of Coal India Ltd. and BCCL. All the regular full time employees stood transfer to the Cadre of respective Coal Companies w.e.f. 1-10-1986 with the terms and conditions as regard their option for Government or Company's service rules. According to the aforesaid state of affairs, all the employees of the erstwhile employer were required to submit option. The option are quoted below:

- (a) Option No. 1 - Option to retain Government service.
- (b) Option No. 2 - Option to be absorbed in the Company's Pay Scales and terms and conditions.
- (c) Option No. 3 - Option to be absorbed in the Companies but retention of the Government Pay-Scales and service conditions including pensionary benefit.

The concerned workmen accepted the third option and submitted Option Form and accordingly they became Optee No. 3. According to the said Option Form, the detail of Option No. 3 are -

"OPTION No. 3:

- (A) Employees on absorption who do not opt for company's pay scales and terms & conditions of service, will retain their existing pay scales and service conditions including pensionary benefits prior to absorption in the Coal Companies and retirement benefits as admissible in Government service as on 30th September, 1986 immediately prior to absorption.
- (B) Such of the optees will also be governed by their existing Rules in the matter of overtime, leave, leave travel concession.
- (C) In the matter of discipline, medical facilities and working hours and holidays they will be governed by the Rules of the Company at their places of posting.
- (D) Such of the optees opting for Government pensionary benefit will have to become members of Public Provident Fund w.e.f. 1-10-1986.
- (E) Such optees will, however, not be entitled to any career growth opportunities at par with those optees opting for Company's pay-scales.

- (F) Superannuation age of such employees will remain 58 years of age.

Since then the workmen concerned are getting the holidays according to the Rules of the Company. There is no deviation in allowing them to avail the holidays of the Option No. 3. The modelities decided by the Government at the time of abolition of the Coal Mines Labour Welfare Organisation in respect of transfer of the employees and terms and conditions of the employees can not be subject matter of the industrial disputes. However, in any view of the demand of the concerned workmen is not justified.

It has been prayed before this Tribunal to hold that the action of the management is justified and the concerned workmen are not entitled to any relief.

4. Both the parties have filed their respective rejoinders stating almost same facts as have been stated in their respective written statement and admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The witness WW-1, Sarama Issac, one the concerned workmen, has been examined on behalf of the workmen, who has proved Exts. W-1, W-2 and W-3.

The management has produced MW-1, M.K. Singh, who has proved no document.

6. Main argument advanced on behalf of the workmen is that they have opted for Government pay scale and other facilities, but the management is not giving them 18 days paid Gazetted holidays and 8 days off in every month as per Central Government employees. As per absorption Ext. W-1 option has been given by the concerned workmen in the subsidiary of CIL but to retain the Government pay scale and service conditions including pensionary benefit. It shows that the concerned workmen opted for Government pay scale and service conditions including pensionary benefit. In this respect MW-1, M.K. Singh, the management's evidence in cross-examination is very much important. He has stated at page 4 that the concerned workmen used to get all the benefits of Central Govt. before take over. He also stated that "I do not know the rules and regulation of the Central Government applicable to the Central Government employees. I cannot say whether those option forms were given to the concerned workmen before take over. Before take over concerned workmen used to get holidays as per Central Government Rules. These workmen used to get holidays as per Central Government leave and holidays and they are demanding holidays only as per Central Government Rules which the management is denying. It shows that the management wrongly and arbitrarily denying right of the concerned workmen regarding holidays and other benefits. In absorption form it has been clearly mentioned that the concerned workmen are entitled for Government pay scale

and other benefits including service conditions and other pensionary benefit including holidays. In this respect M/s. CCL, Ranchi issued an Office Order dated 14-1-1999 giving direction that as per settlement Printing Press workmen will get 2nd Saturday in each month as an off day and 18 paid holidays in a year like other monthly rated employees posted at CCL Headquarters. It shows that when other office has allowed 18 paid holidays, but the concerned workmen have not been allowed the same facility, as per format which has been filled up by the concerned workmen and accepted by the management.

7. The concerned workmen referred 2008 (4) JLJR 8 in which Hon'ble Jharkhand High Court laid down that provisions of Gratuity Act will prevail over the rules framed under Coal Executives' Conduct Discipline and Appeal rules, 1978—power to withhold gratuity must be subject to the provisions of the Act—gratuity becomes payable as soon as the employee retires after rendering minimum five years' continuous service - gratuity cannot be withheld after retirement during pendency of departmental proceeding. It has also been held by Hon'ble High Court that the Rules framed by the Coal India Ltd. are not statutory rules. They have been made by the holding company of Respondent No. 1.

8. Management's counsel argued that there is company's rules for not giving paid holidays, but as per law such rule has got no statutory value and they are not statutory rules. The management cannot over-ride holidays granted by the government.

9. Learned representative of the workmen also referred an Award passed by the Tribunal in Reference No. 60 of 1990 in which 18 days paid holidays annually and 2nd Saturday off in each month has been allowed to the employees of CCL Printing Press, Ranchi.

10. The management has referred 2008 Lab. I.C. 2195 in which Hon'ble Supreme Court laid down that the petitioner earlier was an employee of Coal Mines Welfare Organisation -petitioner employee exercised his option not to be retained in Government service but opted to be absorbed in any of government companies.

11. In the present case as has been discussed above, shows that the management is not justified in not allowing the concerned workmen 18 days Gazetted Holidays and 8 days holidays at par with the Central Govt. employees.

12. Accordingly, I render the following award- The action of the management of Central Hospital, M/s. BCCL, Dhanbad in not allowing to Mrs. M. Joseph & 29 others (as per list) to avail the 18 days Gazetted Holidays and 8 days holidays at par with the Central Govt. employees per annum is not justified. As such, the management is directed to allow to Mrs. M. Joseph and 29 others to avail the 18 days Gazetted Holidays and 8 days holidays at par with

the Central Govt. employees since the date of their joining at Central Hospital, Dhanbad. The management is also directed to implement the award within 30 days from the date of publication of the award.

This is my Award.

H. M. SINGH, Presiding Officer

List of workmen

ANNEXURE - 'A'

S. No.	Name	Designation
1.	Mrs. M. Joseph	Ward Nurse
2.	Mrs. Usha Banerjee	-do-
3.	Mrs. R. Tigga	-do-
4.	Mrs. Manju Banerjee	-do-
5.	Miss. Kalpana Bhattacharjee	-do-
6.	Mrs. P. Singh	-do-
7.	Mrs. P. Topo	-do-
8.	Mrs. Sandhya Chatterjee	-do-
9.	Mrs. Leelamma Chacko	-do-
10.	Mrs. Chaya Sen	-do-
11.	Mrs. Ratna Sarkar	-do-
12.	Mrs. Meera Das	-do-
13.	Mrs. Chinu Sengupta	-do-
14.	Mrs. Aleyamma Varghese	-do-
15.	Mrs. Dipty Barat	-do-
16.	Mrs. Arti Choudhary	-do-
17.	Mrs. Annamma Philip	-do-
18.	Mrs. Purnima Dutta	-do-
19.	Mrs. Mita Mandal	-do-
20.	Mrs. Nemita Banerjee	-do-
21.	Mrs. Monica Prasad	-do-
22.	Mrs. Saramma Isaac	-do-
23.	Mrs. Sulekha Nathemil	-do-
24.	Mrs. Geeta Banik	-do-
25.	Mrs. Dini Kerketta	-do-
26.	Mrs. Geeta Srivastava	-do-
27.	Mrs. Jharna Roy Wadker	-do-
28.	Mrs. Deepali Pandey	-do-
29.	Mrs. Sosamma Wathew	-do-

नई दिल्ली, 10 मार्च, 2010

का.आ. 881.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स भारत कोकिंग कोल लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं.-1, धनबाद के पंचाट (संदर्भ संख्या 133/1988) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-3-10 को प्राप्त हुआ था।

[सं. एल-20012/348/86-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 10th March, 2010

S.O. 881.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 133/1988) of the Central Government Industrial Tribunal No.1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Coking Coal Limited and their workmen, which was received by the Central Government on 10-3-10.

[No. L-20012/348/86-IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No. 1, DHANBAD**

Present : Shri H. M. Singh, Presiding Officer

In the matter of Industrial Disputes Under Section 10 (1) (d) of the I.D. Act, 1947.

Reference No. 133 of 1988

Parties : Employers in relation to the management of Moonidih Project of M/s. Bharat Coking Coal Limited and their workman.

APPEARANCES

On behalf of the workman : None

On behalf of the Employers : None

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 26-2-2010

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10 (1) (d) of the I.D. Act., 1947 has referred the following dispute to this

Tribunal for adjudication vide their Order No. L-20012/ (348)/86-D. III (A)/DIV (A) dated the 28th September, 1988.

SCHEDULE

“Whether the action of the management of Monidih Area of M/s. Bharat Coking Coal Ltd., P.O. Moonidih Dhanbad in dismissing from service Shri Puran Mahto is justified? If not, to what relief the workman is entitled?”

2. The case of the concerned workman as disclosed in his Written Statement is that he had been working as permanent Miner/Loader at Moonidih Project since long with unblemished record of service. The local management was very much biased against the concerned workman as at that time Shri Anand Mahato, Union Leader of Bihar Colliery Kamgar Union was vanguarding the Trade Union movement contrary to the desire of the management. It has alleged that the management started taking action against all Mahatos keeping their eye to Anand Mahato. In order to victimise the concerned workman the management falsely implicated the concerned workman in false criminal case and simultaneously issued a charge-sheet to the concerned workman. The concerned workman thereafter submitted his reply denying the charges emphatically. The concerned workman represented to the management that as the criminal case is pending on the name charges no departmental proceeding should be initiated against him.

3. The concerned workman also represented to the management several times challenging the illegal and arbitrary stoppage of petitioner from service without assigning any reason. It has been alleged that the management did not submit any reply on the contrary held a departmental enquiry and ultimately dismissed the concerned workman from service. It has been stated by the concerned workman that the action of the management is illegal, arbitrary, unjustified and against the provisions of standing order. Thereafter the concerned workman raised an industrial dispute before the ALC (C) Dhanbad which ultimately resulted reference to this Tribunal for adjudication. It has been prayed on behalf of the workman to pass an Award in favour of the workman by awarding the reinstatement with full back wages.

4. In the Written Statement submitted by the management wherein it has been stated that the reference is not legally maintainable. In the facts of the case they have stated that on 11-9-80 a mob of workmen armed with deadly weapons like pistols, guns, lathies, Iron Rods etc. proceeded towards the office of Moonidih Project, with the common intention of abusing, assault in injuring, intimidating the officers of the management, to create panic amongst them during the office hours between 3 PM to

5 PM. The Project Officer, Sri A.K. Gulathi, on receiving information about movement of a violent mob towards the office, advised all the officers on duty, to hide themselves in the nearby Guest House and advised his PA to inform the Headquarter and police for their protection. The security department was informed. The mob ransacked the office, indulged in various acts of vandalism started searching for the officers, broke open the gate of the Guest House, forcibly entered into the road of the Guest House, where officers were hiding and started abusing, assaulting and injuring the officers, one by one and committed various acts of misconducts, subversive of discipline.

5. The concerned workman was one of the members of the aforesaid violent mob. He assaulted Shri S. P. Singh, Supdt. (E & M) & Sri Sha Kajmi, Sr. Mining Engineer besides committing various misconducts along with others. For committing various acts of misconduct a chargesheet dated 19-9-80 was issued to the concerned workman containing various allegations. The concerned workman was a PR Miner with token No. 5286. The charge-sheet was sent to the concerned workman, by Regd. Post. A copy of the chargesheet was sent to him under certificate of posting where as another copy was sent through local messenger. A copy of the chargesheet was also published in the local news paper "Awaz" having wide publication, in its publication dated 20-9-80. The concerned workman did not submit any reply to the chargesheet issued to him. The date of enquiry was fixed on 25-9-80 by letter dated 22-9-80, Shri R.N. Ganguly the then Dy. P.M. was appointed as Enquiry Officer and Sri R. P. Singh, Dy. P.M. was appointed as presenting officers by the same letter of enquiry dated 22-9-80. It has been stated by the management that the letter of enquiry dated 22-9-80 was sent to the concerned workman by Regd. Post in his Home Address given below :—

Sri Puran Mahato, son of Sri Bansi Mahato, Vill : Bardubhi, P. O. Lalpur, Dist. Dhanbad.

A copy of the letter of enquiry was sent under certificate of posting and another copy was sent through special messenger. A copy of the notice of enquiry was published in local newspaper "Awaz" in its issue dated 23-9-80. The concerned workman Sri Puran Mahato did not appear in the enquiry and also did not send any application for adjournment of the enquiry and displayed scant respect for the chargesheet, the letter of enquiry as well as towards the management. Finding no response from him, the enquiry was conducted exparte him on 25-9-80. In the departmental enquiry, the management examined 17 witnesses and the charges levelled against the concerned workman were duly established. The enquiry officer drew up the enquiry report on 25-9-80 and submitted the same to the General Manager/Chief Mining Engineer, who after

perusing the report and proceedings and other relevant papers dismissed the concerned workman by letter dated 25-9-80. The Lock up was declared on 11-9-80 after the incidence in the colliery, by notice dated 11-9-80 and was lifted on 29-9-80 after meeting of Joint Bipartite Consultative Committee. As per the unanimous decision of the Joint Bipartite Committee all the Central Unions condemned the violent acts on the part of the workmen. It has been stated by the management that the action taken by them in dismissing the concerned workman from his services is legal, bonafide and in accordance with the provisions of the certified standing orders and is justified. Accordingly prayer has been made to pass an Award rejecting the claim of the concerned workman.

6. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paras of each other's Written Statement.

7. Before taking up the case on merit, fairness and propriety of the domestic enquiry was taken up as a preliminary issue in which management examined one witness viz. R. N. Ganguly, Enquiry Officer as MW-I and documents on their behalf have been marked as Ext. M-1 to M/9/1. This Tribunal, however, considering evidence facts and circumstances held the domestic enquiry as fair, proper and in accordance with the principle of natural justice. Thereafter the case was fixed for hearing on merit. Notices dated 6-5-2009 were sent to the parties for 17-6-2009 but none appeared.

8. However, main contention of the concerned workman was that when a Criminal case was pending regarding alleged incident enquiry proceeding should not have been started and if it has been stated it should be stayed but this contention does not seem to be fair and proper. As per Chargesheet which has been issued to the concerned he along with others on 11-9-80 armed with deadly weapons like pistols, guns, lathies, Iron rods etc. proceeded towards the office of Moonidih Project with the common intention of abusing, assaulting injuring, intimidating the officers of the management to creat panic amongst them during the office hours between 3 PM to 5 PM. The project Officer, Sri A. K. Gulathi, on receiving information about movement of a violent mob towards the office, advised all the officers on duty to hide themselves in the nearby Guest House and advised his PA to inform the Headquarters and Police for their protection. The security department was informed. The mob ransacked the office, indulged in various acts of vandalism started searching for the officers, broke open the gate of the Guest House, forcibly entered into the road of the Guest House where officers were hiding and started abusing, assaulting and injuring the officers one by one and committed various

acts of misconducts, subversive of discipline. The concerned workman was one of the members of the aforesaid violent mob. He assaulted Shri S.P. Singh, Supdt. (E & M) and Sri Sha Kajmi, Sr. Mining Engineer besides committing various misconducts along with others. A chargesheet dated 19-9-80 was issued to the concerned workman containing various allegations arising of the acts on 11-9-80. The chargesheet was sent to the concerned workman by Regd. Post and a copy of the chargesheet was sent to him under certificate of posting whereas another copy was sent through local messenger. A copy of the chargesheet was also published in the local newspaper "Awaz" having wide publication, in its publication dated 20-9-80. The concerned workman did not submit any reply to the chargesheet issued to him. The date of enquiry was fixed on 25-9-80 by letter dated 22-9-80, Shri R.N. Ganguly the then Dy. P.M. was appointed as Enquiry Officer and Sri R. P. Singh, Dy. P.M. was appointed as presenting officers by the same letters of enquiry dated 22-9-80. The letter of enquiry dated 22-9-80 was sent to the concerned workman by Regd. Post in his Home Address. A copy of the letters of enquiry was sent under certificate of posting and another copy was sent through special messenger. A copy of the notice of enquiry was published in local newspaper "Awaz" in its issue dated 23-9-80. The concerned workman Puran Mahato did not appear in the enquiry and also did not send any application for adjournment of the enquiry and displayed scant respect for the chargesheet, the letters of enquiry as well as towards the management. Finding no response from him, the enquiry was conducted exparte on 25-9-80. The enquiry officer drew up the enquiry report on 25-9-80 and submitted the same to the General Manager/Chief Mining Engineer, who after perusing the report and proceedings and other relevant papers dismissed the concerned workman by letter dated 25-9-80. The lock up was declared on 11-9-80 after the incidence in the colliery by notice dated 11-9-80 and was lifted on 29-9-80 after meeting of joint Bipartite Consultative Committee. All the charges levelled against the concerned workman have been proved by the evidence of the management witnesses in course of departmental enquiry.

9. Since the acts committed by the concerned workman are of very serious nature he has no right to remain under the employment of the management. In view of the facts, circumstances and evidence discussed above I find no merit in the claim of the concerned workman. Accordingly following Award is rendered :—

" the action of the management of Monidih Area of M/s. Bharat Coking Coal Ltd., P.O. Monidih, Dhanbad in dismissing from service Shri Puran Mahto is justified. Consequently, he is not entitled to get any relief."

H. M. SINGH, Presiding Officer

नई दिल्ली, 10 मार्च, 2010

का.आ. 882.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी. सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं.-1, धनबाद के पंचाट (संदर्भ संख्या 74/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-3-2010 को प्राप्त हुआ था।

[सं. एल-20012/205/2001-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 10th March, 2010

S.O. 882.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/2003) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCIL and their workmen, which was received by the Central Government on 10-3-2010.

[No.1-20012/205/2001-IR(C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

Present : Shri H. M. Singh, Presiding Officer

In the matter of an Industrial Dispute under Section 10
(1)(d) of the I.D. Act, 1947.

Reference No. 74 of 2003

Parties: Employers in relation to the management of
Tisra Colliery of M/s. B. C. C. L. and their workman

APPEARANCES

For the employers : Shri D. K. Verma, Advocate

For the workman : Shri B. N. Singh,
Authorised Representative.

State : Jharkhand. Industry : Coal

Dated, Dhanbad, 4th March, 2010

AWARD

The Govt. of India, Ministry of Labour, in exercise of
the powers conferred on them under Section 10 (1) (d) of

the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/205/2001-IR (C-I) dated the 6th August, 2003.

SCHEDULE

“KYA RASHTRIYA COLLIERY MAZDOOR CONGRESS KII BHARAT COKING COAL LIMITED, NORTH TISRA COLLIERY KEY PRABANDH-TANTRA SEY MANG KII SEVA DASTABEJON MEIN, SHRI JANARDHAN SINGH, CAP LAMP ISSUE CLERK KI JANM TARIKH 12-7-1948 KII JAYE, UCHIT EVAM SAHI HAIN ? YADI HAIN TO UKT KARMKAR KIS RAHAT KEY PATRA HAIN?”

2. The case of the workman as disclosed in the Written Statement submitted on his behalf by the union is that Shri Janardan Singh was appointed in 1971 in North Tisra Colliery and he was permanent workman of this Colliery. At the time of his initial appointment his date of birth was recorded as 12-7-1948 in the Form B Register maintained in North Tisra colliery under Section 48 of the Mines Act, 1952. The concerned workman all along presumed for long that his actual date of birth as 12-7-1948 retained in the records of the management but when the concerned workman was given copies of service records dated 11-7-1987 to make his signature therein, he stunned to see his date of birth written therein as 12-7-1942 in Hindi and against the same also was written as P.F. (12-7-1948) in (English). Carbon copy of one of his service excerpt dated 11-7-87 was handed over to him. Thereafter the concerned workman submitted one petition dated 11-7-1987 stating therein that he had received one form from the management in which his dated of birth was wrongly written as 12-7-1942 and so it should be corrected as 12-7-1948 which finds mention in P.F. records also. The concerned workman represented the matter before the management many times but he was informed by the management that it would not be corrected. Thereafter the concerned workman approached the union which raised industrial dispute before the ALC (C) and ultimately same resulted reference to this Tribunal for adjudication. It has been alleged by the concerned workman that the management arbitrarily and illegally acted with him and superannuated him prematurely from August, 2002.

3. It has been prayed on behalf of the workman to pass an Award holding that the demand of National Coal Workers Congress from the management of North Tisra Colliery of Bharat Coking Coal limited for incorporating the date of birth as 12-7-1948 of Shri Janardan Singh, the concerned workman, in its records is proper and justified since this date of birth as 12-7-48 of the concerned workman is his actual date of birth which finds mention in original statutory Form B register in continuation on the initial date of his appointment.

4. In the Written Statement submitted on behalf of the management it has been stated that the present reference is not maintainable either in law or in fact. Hon'ble Supreme Court and High Courts held in the large number of cases that the industrial dispute in respect of correction of date of birth is not permissible if it is raised in belated state or fag end of the service. The union of the concerned workman raised the present dispute at the fag end of the services of the concerned workman.

5. It has been further stated in the Written statement that the concerned workman was issued services except in the year 1987 mentioning therein his date of birth and other particulars. When the concerned workman vide his letter dated 11-7-1987 raised an objection in respect of his date of birth as mentioned in the service excerpt, the management considered the matter and referred him to Special Medical Board for assessment of his age according to Implementation Instruction No. 76. The special Medical Board in its turn assessed his age as 46 years as on 20-8-88 which was entered in the Form B Register maintained under Rule 43, 51, 77 & 77A clause 2 of Mines Regulations under the Mines Act.

6. It has been asserted by the management that the entries made therein are final for all the purposes. Originally in Form B Register his date of birth was recorded as 20-8-1942 and the concerned workman put his signature in Form B Register in token of acceptance of date of birth and other particulars recorded therein. The management considered his objection and afforded him an opportunity for assessment of his age through Medical Board. The concerned workman thereafter did not raise any objection in respect of the age assessed by the Medical Board. It has been prayed on behalf of the management to pass an award rejecting the claim of the concerned workman.

7. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paras of each other's Written Statement.

8. The Union in order to substantiate the claim of the concerned workman has produced the concerned workman Shri Janardan Singh who has been examined as WW-1 who has proved document marked as Ext. W-1 and W-2. Management in order to substantiate their claim has produced Malay Banerjee who has been examined as MW-1 who has proved document marked as Ext.M-1.

9. Main argument advanced on behalf of the concerned workman is that his date of birth 12-7-48 has been incorrectly recorded by the management as 12-7-42 and on this basis he has been superannuated in August, 2002. It has also been argued that in the service excerpt which has been given to the concerned workman in 1987 he has mentioned his date of birth as 12-7-48 but that has not been considered by the management though he has moved the matter to the management by a number of

applications. His date of birth 12-7-48 has also been recorded in CMPF record. His age has been wrongly assessed by the Special Medical Board as per Implementation Instruction No. 76 on 20-8-88 as 46 years. The act of the management is illegal and against law. He was appointed on 13-7-71.

10. In this respect management counsel argued that the concerned workman raised this dispute at the fag end of his service and as per Implementation Instruction No. 76 his case for determination of age was referred to the Medical Board which assessed his age as 46 years on 20-8-88. In service excerpt his date of birth has been mentioned as 12-7-42 also in other records of the company his date of birth has been mentioned as 12-7-42. In this respect the cross examination of WW-1 is very much material. WW-1 admitted in cross-examination that his date of birth was assessed by Special Medical Board as 46 years on 20-8-88. He has also stated at page-2 of his cross-examination "I had not filed any certificate regarding date of birth." It shows that when there is no document regarding date of birth, the age has been assessed by the Medical Board should be final. There is no ground to assess and change his date of birth from 12-7-42 to 12-7-48. Moreover, Ext.W-1 has been signed by him and it seems that he is a literate person.

11. As regards argument that his date of birth has been written as 12-7-48 in C.M.P.F. record has got no meaning. In C.M.P.F. record date of birth should be mentioned on the basis of service excerpt. Moreover, in C.M.P.F. record Ext.W-3 his wife's age has been shown as 20 years as well as in Service excerpt his wife's age has been shown as 35 years which shows discrepancy. The Service Excerpt and Form B register wherein his date of birth has been recorded as 12-7-42, has been signed by the concerned workman. Medical Examination conducted by the management regarding his age has been shown as 46 years on 20-8-85 with other many workers. Ld. Counsel for the management referred to a decision reported in 2006 Supreme Court Cases (L&S) 1445 in which Hon'ble Supreme Court laid down the following :-

"Retirement/Superannuation—Age for Retirement/ Superannuation- Alteration/Correction of date of birth entered in service record—Request for, made at the verge of retirement cannot be entertained—Request must be made within the period, if any, prescribed under the rules and in absence thereof, within a reasonable period—Request must be in accordance with the procedure prescribed—Onus lies on".

In view of the facts, circumstances, evidence and law points discussed above, I find no merit in the claim of the concerned workman. Accordingly, the following Award is rendered :—

"RASHTRIYA COLLIERY MAZDOOR CONGRESS KII BHARAT COKING COAL LIMITED, NORTH TISRA COLLIERY KEY PRABANDHTANTRA SEY MANG KII SEVA DASTABEJON MEIN, SHRI JANARDHAN SINGH, CAP LAMP ISSUE CLERK KI JANM TARIKH 12-7-1948 KII JAYE, UCHIT EVAM SAHI NAHI HAIN ATTAAH KARMAKAR KIS RAHAT KAY PATRA NAHI HAIN?"

H. M. SINGH, Presiding Officer

नई दिल्ली, 10 मार्च, 2010

का.आ. 883.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स शालीमार तार प्रोडक्ट्स लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्रम न्यायालय सं.-1, धनबाद के पंचाट (संदर्भ संख्या 138/1990) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-3-2010 को प्राप्त हुआ था।

[सं. एल-20012/130/84-डी-III(A)/आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 10th March, 2010

S.O. 883.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 138/1990) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Shalimar Tar Products Ltd. and their workmen, which was received by the Central Government on 10-3-2010.

[No. L-20012/130/84-D.III(A)/IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

Present : Shri H. M. Singh, Presiding Officer

In the matter of Industrial Disputes under Section 10 (1) (d) of the I.D. Act, 1947

Reference No. 138 of 1990

Parties: Employers in relation to the management of Shalimar Tar Products Ltd.'s Shalimar Tar Plant and their workman.

APPEARANCES

On behalf of the workman : None

On behalf of the Employers : None

State : Jharkhand.

Industry : Coal

Dated, Dhanbad, the 2nd March, 2010

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10 (1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/130/84-D-III(A)-IR (Coal-I) dated 7th June, 1990.

SCHEDULE

“Whether the action of the management of Shalimar Tar Plant of M/s. Shalimar Tar Products (1935) Ltd., Jharia in dismissing from service Shri P.K. Das alias Panchikori Das w.e.f. 16-10-69 is justified? If not, to what relief is the workman entitled?”

2. The case of the concerned workman as disclosed in his Written Statement is that he was appointed as Asstt. Cashier of M/s. Shalimar Tar Products (1935) Ltd. on 1-11-1949. The Shalimar Tar Products Ltd. had sister concern under the same management headed by Managing Director of Lodna Colliery, Shripur Colliery etc. and Personnel Department Cash Office, Accounts Section including Shalimar Tar Products Ltd. situated at Lodna office carried on under control and supervision of one and same management at Lodna Colliery as such the staff and workmen were being transferred to the branch concerned time to time to perform duties within Routine Course by the Chief Mining Engineer, Lodna Colliery of Lodna Colliery Company (1920) Ltd.

3. It has been further stated by the concerned workman that in the month of April, 1969, the concerned workman was transferred to Sripur Colliery to perform his duty as Asstt. Cashier after receiving the charges of Cash and on satisfaction released the concerned workman from Shalimar Tar Products Ltd. without any complaints or grievances or any dues against him unblemishly, concerned workman had been discharging his duties at the place of posting at Sripur Colliery from April, 1969 to July, 1969 without any stigma and thereafter the management again transferred him to Shalimar Tar Products, Lodna in the month of August, 1969 vide order dated 30-6-69 by the Chief Mining Engineer to Lodna office. The prima facie case of dismissal of the concerned workman from the service on 16-10-1969 is for alleged misconduct of defalcation of Rs. 10,000 from company's cash office. It has been alleged by the concerned workman that the charges of defalcation of Rs. 10,000 in company's cash office in January, 1969 against him is vague, inspecific and motivated and the charges were neither proved nor established. It has been stated that the punishment of dismissal imposed upon the concerned workman was done in violation of clause 9 (2) and 8 (21) of the Certified Standing Order of the Company.

Moreover, the mandatory provision of Section 25 F of the I.D. Act, 1947 was not followed in doing so. However, an enquiry proceeding was conducted to enquire into the charges mentioned in the Charge Sheet No. STP/70/IT dated 11-7-69 against the concerned workman by the Enquiry Officer. It has been alleged that the Enquiry Officer was biased, improper, unfair and he conducted the enquiry without providing reasonable opportunity to the concerned workman. After dismissal of the concerned workman vide letter dated 16-10-69 the management lodged a FIR against him on 25-10-69 in Jharia P. S. Case No. 43/69, on the same and identical charges u/s. 408 I.P.C. The Trial Court after considering the whole facts and circumstances acquitted the concerned workman and set him at liberty in G.R. Case No. 43/69 vide judgment order dated 26-4-82. In view of the facts and circumstances, the concerned workman has prayed to pass an Award in favour of the concerned workman with relief of reinstatement in the service of the company with full back wages and other consequential benefits.

4. In the Written Statement filed on behalf of the management it has been stated that the present reference is not legally maintainable. It has been stated by the management that they are not engaged in any mining industry. It is not neither producing coal nor manufacturing coke out of Coal. Therefore, according to the management, it is not a controlled industry in terms of Section 2 (ce) of I.D. Act, 1947, read with Section 2 of the Industries Development and Regulation Act, 1957.

5. It has been stated by the management in their Written Statement that the concerned workman was dismissed from his services in the year 1969 and the present individual dispute has been referred in the year 1990 after a period of more than 20 years. Therefore the present reference under Section 10 of the I.D. Act, 1947 is not legally maintainable as there has been an inordinate delay and it is an individual nature of dispute. Moreover, the present reference has been made after the concerned workman crossed the age of his superannuation. Therefore, no Employer-Employee relationship existed between the concerned workman and the management. It has been stated that the year of birth of the concerned workman was 1929 and he was employed on 1-11-49. Had he not been dismissed from his services w.e.f. 16-10-69 he would have been superannuated with effect from 1-11-89 as per Company's Rule after completion of 40 years of service. As the reference has been made after the date of his superannuation, he cannot get any relief.

6. As per the Written Statement of the management the concerned workman Sri P.K. Das was working as Assistant Cashier at Jharia Office of the Management in the years 1968 and 1969. His duty was to bring money from Lodna Colliery Cash Office on Suspense Account according to requirement of the Tar Plant Office during a

week on the basis of Suspense Slips given to Colliery Cash Office. At the week end he was required to prepare receipt voucher for the amount taken on Suspense Accounts, to obtain signature of competent authorities and to hand over the Receipt voucher to the Cash office at Lodna Colliery. After getting the Receipt voucher, the Suspense Slips relating to the receipt voucher used to be returned to the concerned workman which he used to destroy. His duty was to enter the amount received in the Cash Book of Tar Plant. However, in the month of January, 1969 he withdrew the total amount of Rs. 1,72,500 by way of Suspense Accounts in different weeks and submitted receipts vouchers against all Suspense Accounts to Lodna Colliery Cash Office. He entered total amount of Rs. 1,62,500 in the Tar Plant Cash Book. Thus the amount of Rs. 10,000 was not shown in the Cash Book of the Tar Plant and the concerned workman mis-appropriated the amount. In course of reconciliation of accounts of both the places in June, 1969 it was observed that the concerned workman had withdrawn Rs. 1,500 on 21-1-69 and Rs. 8,500 on 24-1-69 on Suspense Accounts from Lodna Colliery Cash Office and had submitted receipt Voucher No. LR/15/68-69 dated 25-1-89 for the amount of Rs. 10,000. The concerned workman did not enter the aforesaid amount of Rs. 10,000 in the Tar Plant Cash Book. He destroyed the Suspense Slips as well as the copies of the Receipt Vouchers. It has been stated by the management that Receipt Vouchers used to be prepared in three copies in Green, Red and White papers. The Green voucher used to be handed over to the Colliery Cash Office and the Red Voucher used to be filed in the Tar Plant Cash Office whereas the White Copy used to remain in the Receipt Voucher Book. The red copy as well as White copy of Receipt Voucher No. LR/15/68-69 were destroyed and not found available at the time of checking.

7. Thereafter the management issued a chargesheet dated 11-7-69 to the concerned workman under clause 9 (2) of the Certified Standing Order applicable to the Establishment. The concerned workman submitted his reply denying the charges. The management then being not satisfied with the reply of the concerned workman ordered for a departmental enquiry which was held on 17-7-69 and 19-7-69 by the then Personnel Officer S.S. Mukherjee in the presence of the concerned workman. The concerned workman was given full opportunity to cross-examine the management's witnesses and to give his own statement and to produce his defence witnesses and documents. The concerned workman also did not raise objection against the Enquiry Officer, and the procedure of enquiry. In course of enquiry proceeding the concerned workman had admitted his guilt. After holding the departmental enquiry the Enquiry Officer submitted his report making the concerned workman guilty of the misconduct. The enquiry report, the enquiry proceeding and all other connected

papers were duly examined by the Competent Authority and approval for his dismissal was granted. Accordingly, the concerned workman was dismissed from service by letter dated 16-10-69. In view of the facts and circumstances stated above management have prayed to pass an Award holding the dismissal of the concerned workman as justified.

8. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paras of each other's Written Statement.

9. Before taking up the case on merit, fairness and propriety of the domestic enquiry as a preliminary issue was decided first. This Tribunal vide Order No. 21 dated 19-10-92 held that the domestic enquiry conducted against the concerned workman is fair, proper and in accordance with the principle of natural justice. Thereafter notices were issued to the parties on 23-6-2009 fixing 28-8-09 for hearing argument on merit. But on that date none of the parties appeared though Written Argument has been filed by both the parties.

10. Main argument on behalf of the management is that the concerned workman after his superannuation on 1-11-89 moved this reference ventilating his grievance after 20 years delay which is unexplainable. It has also been argued that he was dismissed from service on the charges of embezzlement of money to the tune of Rs. 10,000. He has moved the above reference only after crossing the age of superannuation with the hope that he will get back wages. Management also argued that embezzlement of money to the tune of Rs. 10,000 is a grave misconduct as per Company's Standing Order and he was dismissed after thorough enquiry in which the charges of embezzlement of money was proved against the concerned workman. It has also been argued that in 1969 he was working as Assistant and he received a total remittance of Rs. 1,72,500 from Lodna Colliery Cash Office which has been verified and certified by him and he has shown receipt of Rs. 1,62,500 in Tar Plant Cash Book and he thus embezzled and misappropriated Rs. 10,000 in Tar Plant Cash Book as per voucher sheet No. LR/15/68-69 dated 25-1-89. As the concerned workman has misappropriated Company's money amounting to the tune of Rs. 10,000 and enquiry was held fair and proper and he has moved this dispute only after attaining the age of superannuation it shows that management has rightly dismissed him from service on 16-10-69 for embezzlement and misappropriation of Rs. 10,000. Therefore, management was justified in dismissing the concerned workman from service with effect from 16-10-69. In the result, the following Award is rendered :—

"The action of the management of Shalimar Tar Plant of M/s. Shalimar Tar Products (1935) Ltd., Jharia in dismissing from service Shri P. K. Das alias Panchikori Das w.e.f. 16-10-69 is justified. Consequently, the concerned workman is not entitled to get any relief."

H. M. SINGH, Presiding Officer

नई दिल्ली, 10 मार्च, 2010

Dated, the 3rd March, 2010

AWARD

का.आ. 884.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14), की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी. सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1, धनबाद के पंचाट (संदर्भ संख्या 77/89 एवं 81/89) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-3-2010 को प्राप्त हुआ था।

[सं. एल-20012/119/88-डी. IV (ए)आईआर(सी-1)]

[सं. एल-20012/109/88-डी. IV आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 10th March, 2010

S.O. 884.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 77/89 & 81/89) of the Central Government Industrial Tribunal No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. B.C.C.L. and their workman, which was received by the Central Government on 10-3-2010.

[No. L-20012/119/88-D. IV (A)-IR (C-1)]

[No. L-20012/109/88-D. IV-IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1 AT DHANBAD**

Present: Shri H.M. Singh, Presiding Officer

In the matter of Industrial Disputes under Section 10 (i) (d) of the I. D. Act., 1947

Reference No. 77 of 1989**Parties:**

Employers in relation to the management of B. C. C. L.'s Simlabahal Colliery, Bhalgora Area and their workman.

(Ministry's Order No. L-20012 (119)/88-D. IV (A)/IR- (C-1) dated, the 14th June, 1989).

Reference No. 81 of 1989**Parties:**

Employers in relation to the management of B. C. C. L.'s Simlabahal Colliery, Bhalgora Area and their workman.

(Ministry's Order No. L-20012 (109)/88-D. IV/IR- (C-1) dated, the 14th June, 1989).

APPARANCESOn behalf of the Workmen : Mr. R. N. Ganguly,
AdvocateOn behalf of the employers : Mr. D. K. Verma,
Advocate

State: Jharkhan Industry: Coal

The Government of India Ministry of Labour, in exercise of the powers conferred on them under Section 10 (1) (d) of the I. D. Act, 1947 has referred the following disputes to this Tribunal for adjudication vide their orders referred to above.

The Schedule in Reference No. 77 of 1989

"Whether the action of the management of Simlabahal Colliery under Bhalgora Area of M/s. BCCL., P.O. Jharia, Dt. Dhanbad in dismissing Shri Bharat Dusadh, Ex-Sub-Attendant, from services vide their letter dated No. BCCL: SBC: ID:88:710 dated 28-5-88 is justified? If not, to what relief the concerned workman is entitled?"

The Schedule in Reference No. 81 of 1989

"Whether the action of the management of Simlabahal Colliery under Bhalgora Area of M/s. BCCL., P.O. Jharia, Dt. Dhanbad in dismissing Shri Kedar Nath Kahar, vide their letter No. BCCL: SBC: PD:88:709 dated 28-5-88 from services is justified? If not, to what relief the concerned workman is entitled?"

2. At the very outset it is pertinent to mention that as both the reference cases are arising out of the same transaction, one departmental enquiry and the documents are common, both the cases were heard analogously on the prayer of the parties and accordingly this Award will govern both the reference cases.

3. The case of the management of Simlabahal Colliery of M/s. BCCL as per their Written Statement is that in the night of 12-12-82/13-12-82 a theft of cash amounting to Rs.2,03,537 (Rupees Two lakh three thousand five hundred thirty seven) was committed from the safe of cash room of Simlabahal Colliery. F.I.R. in respect of commission of the above crime was sent to Jharia P. S. on 13-12-82 for investigation. The Investigation Officer of Jharia P. S. started investigation, recorded statements of various persons and suspected some persons including the concerned workmen as parties to planning of commission of theft of the cash amount. On 19-12-82 at about 4.00 A. M. the Police raided the houses of the concerned workman, Kedar Nath Kahar figuring in Ref. No. 81/89 and Rajaram Kahar and recovered Rs.27,184, Rs. 80,658 and Rs. 15,921 respectively from the residence of these above persons. Bharat Dusadh, the concerned workman in Ref No. 77/89 was working as Switch Board Attendant and Kedar Nath Kahar, the concerned workman in Ref. No. 81/89 was the Attendance Clerk. Rajaram Kahar was the Timber Mistry. All of them were workmen of Simlabahal Colliery. It appears that the Attendance Clerk with the help of two skilled workmen one from Electrical

Deptt. and another from Colliery Carpentry Deptt. planned out the theft of the Cash lying in the safe of the cash room. The management issued chargesheet to all the three workmen and after holding departmental enquiry all of them were dismissed from service. The chargesheet dated 20-12-82 were issued to these workmen. The statement of allegations were enclosed alongwith letters dated 31-12-82. The acts committed by these three workmen amounted to the misconduct of theft, fraud and dishonesty in connection with employer's business. The management appointed Sri C. N. Singh, the Dy. Personnel Manager of Bhalgora Area to conduct the departmental enquiry against the concerned workmen and Kedar Nath Kahar. Sri C. N. Singh conducted a joint enquiry. The letters of enquiries were sent through registered posts and were published in the local newspaper 'Awaz'. Both of them deliberated avoided to attend the enquiry; as a result the enquiry was held exparte. The Enquiry Officer submitted his enquiry report on 6-4-88 holding the aforesaid workmen guilty of the misconducts alleged against them. After taking approval for their dismissal, both these workmen were dismissed from service by order dated 28-5-88 of the agent of the colliery. It has been prayed on behalf of the management that an Award be passed holding the dismissal of the concerned workmen as justified and that the concerned workmen are not entitled to get any relief.

4. The case of the concerned workmen is that they were permanent workmen of Simlabahal Colliery. While Bharat Dusadh was working as Switch Board Attendant and Kedar Nath Kahar was working as Attendance Clerk. They were not in good books of the company. They were issued with so-called chargesheets dated 20-12-82. Later, the management cooked up a statement of allegations and issued the same to the concerned workmen on 31-12-82. In the statement of allegation it was mentioned that a theft took place in the cash room of Simlabahal Colliery in the night of 12-12-82 and 13-12-82 and the management had lost a sum of Rs.2,03,573. 00 and that a sum of Rs. 27,184 was recovered from the residence of Bharat Dusadh and a sum of Rs.80,658 was recovered from the residence of Kedar Nath Kahar. Both of them were arrested by the Police and were in jail. Both of them were released on bail and replied to the charge-sheet denying the charges. Both of them were acquitted of the charges by the Judicial Magistrate, 1st Class, Dhanbad by his judgement dated 27-2-88. The management did not accept the judgement and held an exparte domestic enquiry without any notice to them. Hence, the present industrial dispute has been raised by them. It has been prayed on behalf of the concerned workmen to pass an Award in favour of the workmen directing the management to reinstate them in their services with payment of full back wages.

5. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paras of each other's Written Statement.

6. Before taking up the case on merit, at the instance of the management fairness and propriety of the domestic

enquiry was considered as preliminary issue. The management in order to sustain the domestic enquiry examined the enquiry officer as MW-1 and laid in evidence the entire domestic enquiry proceedings which have been marked as Exts.M-1 to M-17. On the other hand, the concerned workmen have examined themselves as WW-1 and WW-2 and four items of documents have been marked on their behalf as Ext.W-1 to W-4. However, this Tribunal after considering the facts, evidence and circumstances held that the enquiry proceeding conducted against the concerned workmen were not fair and proper. Thereafter both the parties were allowed to lead evidence on merit of the case.

7. On merit of the case management examined Syad Hasan Kazmi as MW-2 and Gopal Lal Goswami as MW-3. On their behalf two documents have been marked as Ext.M-18 and M-18/1. On behalf of the workmen Kedar Nath Kahar, Bharat Dusadh, the concerned workmen of both the cases have been examined as WW-1 and WW-2 respectively and one Sibdhari Singh has been examined as WW-3. Only one item of document has been marked as Ext.W-5.

8. It appears from the record that notices were issued to both the parties by this Tribunal on 29-7-09 fixing date on 14-8-09. On that date none of the parties has turned up. However, they have filed Written Argument.

9. Main argument advanced on behalf of the concerned workmen is that they have been falsely implicated and dismissed from services. It has also been argued that they were acquitted by the Criminal Court regarding theft of Rs.2,03,537. So after acquittal they should not be dismissed from service by the management. In this respect management representative argued that Criminal case has got no bearing for dismissing the concerned workmen from services regarding theft of cash amounting to Rs.2,03,537 in which Rs. 27, 184.00 has been recovered from the possession of the concerned workman Bharat Dusadh and remaining amount of Rs.80,658 has been recovered from the possession of Kedar Nath Kahar. Another argument advanced on behalf of the concerned workmen is that the enquiry was not held fairly and properly, so dismissal should be declared illegal and void.

10. In this respect management counsel argued that as the Tribunal held that the domestic enquiry conducted against the concerned workmen was not fair and proper management adduced evidence on the merit of the case and examined MW-2 and MW-3 and the concerned workmen were given opportunity to cross-examine the management witness and to adduce their own evidence before the Tribunal.

11. Regarding acquittal of the two concerned workmen in theft case under Section 457, 380 and 411 it has been held by the Criminal Court in acquittal Order on 27-2-88 that prosecution has failed to produce the Investigating Officer and other material witnesses of the Chargesheet. It shows that the concerned workmen were acquitted by the Criminal Court due to the non-production

of the material witness. So that cannot be the ground while presuming that they have been exonerated, from the charges mentioned in the Chargesheet. Criminal trial has got no weight regarding conviction. In Criminal case prosecution have to produce the prosecution case beyond reasonable doubt. 2003 SCC (L & S) 468 in which Hon'ble Supreme Court hold acquitted in criminal case taken on the same allegation held, in not such ground. But in the departmental enquiry it has to be enquired whether the misconduct has been committed by the concerned workmen or not. In this respect WW-3 Sibdhari Singh at page-2 has stated "I have heard that both the concerned workman were arrested in connection with a criminal case filed against them. I have come to know that there was theft of money from the cash office of the Colliery and in that connection the concerned workmen were arrested." WW-2 has stated in cross examination at page-2 "in the FIR it was mentioned that alleged theft money was recovered from my house. It was alleged that Rs. 27,000 or odd was recovered from my house which was part of theft money. Chargesheet was given to me to which I have submitted my reply." This statement of the concerned workman shows that he was arrested for the theft money which has been recovered from his house and moreover he was in jail custody in this respect.

In view of the facts, evidence and circumstances discussed above I find no merit in the case of the concerned workmen. Accordingly following Awards are rendered:-

Reference No. 77 of 1989

"The action of the management of Simlabahal Colliery under Bhalgora Area of M/s. BCCL., P.O. Jharia, Dt. Dhanbad in dismissing Shri Bharat Dusadh, Ex-Sub-Attendant, from services vide their letter dated No. BCCL: SBC: ID:88:710 dated 28-5-88 is justified? Consequently, he is not entitled to get any relief."

Reference No. 81 of 1989

"The action of the management of Simlabahal Colliery under Bhalgora Area of M/s. BCCL., P.O. Jharia, Dt. Dhanbad in dismissing Shri Kedar Nath Kahar, vide their letter No. BCCL: SBC: ID:88:709 dated 28-5-88 from services is justified. Consequently, he is not entitled to get any relief."

H.M. SINGH, Presiding Officer

नई दिल्ली, 10 मार्च, 2010

का.आ. 885.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1 नई दिल्ली के पंचाट (संदर्भ संख्या 9/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-3-2010 को प्राप्त हुआ था।

[सं. एल-30011/64/2007-आईआर(एम)]

कमल बाखरु, डेस्क अधिकारी

New Delhi, the 10th March, 2010

S.O. 885.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.9/2009) of the Central Government Industrial Tribunal/ Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Hindustan Petroleum Corporation and their workman, which was received by the Central Government on 10-3-2010.

[No. L-30011/64/2007-IR (M)]

KAMAL BAKHRU, Desk Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOOMA COURT COMPLEX, DELHI**

I. D. NO 9/2009

The Secretary,
Petroleum Workers Union,
C-160 Sarvodaya Enclave,
New Delhi - 110017

Claimant

Versus

Senior Station Manager,
Hindustan Petroleum Corporation,
Palam AV, Depot I. G. International Airport,
New Delhi - 110037

Management

AWARD

A "Nav Ratna" company, viz. Hindustan Petroleum Corporation Ltd., (hereinafter referred to as the management) is one of the leading Oil Companies incorporated under the Companies Act. The Corporation is engaged in marketing and distribution of petroleum products. It has an aviation depot at Palam Airport from where it supplies aviation turbine fuel etc. to various national and international airlines. The Petroleum Workers Union is a trade union, recognized by the Corporation, which represents a large number of workmen of the management in northern region, including workmen employed by the management at above said aviation depot at Palam. The aggrieved workmen are members of Petroleum Workers Union, New Delhi. Shri S. S. Patwal-Sr. Mobile Asstt. (Refuelling Operator) and Shri Sat Pal-General Services Asstt. (Crewman) are regular and confirmed employees of the Management for last over 20 to 25 years. Shri Sat Pal is presently posted at Palam Aviation Depot, while Shri S. S. Patwal has retired on 31-10-2007 on superannuation.

2. Shri M. K. Sharma, Sr. Station Manager, Palam Aviation Depot, the Disciplinary Authority, vide order

dated 8-2-2007, reduced basic salary of Shri S. S. Patwal from Rs. 14335 to Rs. 13561 and that of Shri Sat Pal from Rs. 10290 to Rs. 9614 by way of punishment after a domestic enquiry. Appeal against the said order also came to be dismissed. A dispute was raised before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-30011/64/2007-IR (M), New Delhi, dated 2-1-2008, with the following terms:

“Whether the action of the management of HPCL in reducing the basic pay of Shri S. S. Patwal, Sr. Mobile Assistant, (Refueling Operator) by Rs. 774 (Rs. 14335 to 13561 per month and Shri Satpal, General services Assistt, (Crewman) by Rs. 676 (Rs. 10290 to 9614) per month with effect from 8-2-07 is just, fair and legal? If not, to what relief the workmen concerned are entitled to and from which date?”

3. Claim statement was filed by on behalf of the workman pleading therein that Shri S. S. Patwal was working with the management from last 25 years. He superannuated on 31st of October, 2007. A vague charge sheet was served upon him wherein registration number of the Refueller R-15 as well as Refueller R-6 were not mentioned. It was not mentioned in the charge sheet as to who saw him driving Refueller R-15 in rash or negligent manner. It was also not mentioned in the charge sheet as to whether Refueller R-6 was stationary or in a moving condition, when accident was caused. It was not mentioned in the charge sheet as to how accident was caused and what were the damages caused to Refueller R-6. Since the charge sheet was vague, it vitiates the enquiry conducted in the matter.

4. The claimant agitates that in the enquiry proceedings Shri Sanjay Walia and Sibi Mathew were examined. Shri Walia admitted before the enquiry officer that he had not seen the accident. According to him, he saw workman sitting in Refueller R-15 while Sat Pal was standing on the ground. It was admitted by Shri Sibi Mathew before the Enquiry Officer that Refuellers were parked at a place which was not a proper parking area. No separate lighting arrangements were made at that place. Shri Mathew admitted before the Enquiry Officer that the management had not taken any action for safety of its equipments and lives of its employees. Refueller R-6 was an oldest Refueller, which was to be treated as junk. The said Refueller was not shown to the Enquiry Officer, to enable him to assess the damages. Shri Mathew admitted before the Enquiry Officer that the damage was estimated by the contractor. It was pleaded that these facts make it clear that there was no evidence before the Enquiry Officer to assess the damage caused to Refueller R-6. Since the enquiry officer recorded his findings on extraneous considerations, his findings are perverse.

5. The claimant projects that the workman were held accountable for the misconduct, viz., “habitual negligence or neglect of work”. It was presented that the management had not been able to show any other negligence on the

part of Shri Patwal in his service record of 20-25 years. A single instance cannot be termed as habitual negligence. The Enquiry Officer held him accountable for habitual negligence or neglect of work, which proposition makes it clear that the Enquiry Officer had not applied his mind to the facts of the case. The Disciplinary Authority had also not considered these propositions and passed punishment order in a mechanical manner. Appellate Authority had also dismissed appeals of the workmen without application of his mind. A claim is made that the report of the Enquiry Officer and punishment awarded by the Disciplinary Authority reducing basic salary of Shri Patwal from Rs. 14335 to Rs. 13561 and that of Sat Pal from Rs. 10290 to Rs. 9614 may be set aside and the management may be Directed to release their wages and refix pension of Shri Patwal on the basis of his wages, so restored.

6. The management demurred the claim pleading that the industrial dispute raised is liable to be dismissed, since the present dispute was raised before the disposal of the appeal by the Appellate Authority. It has been claimed that punishment awarded to the workman by the Disciplinary Authority and disposal of their appeals by the Appellate Authority were in consonance with the misconduct committed by them. It has been pleaded that charge sheets were served upon Shri S. S. Patwal and Sat Pal on 23-2-05. Reply submitted by Shri S.S. Patwal and Sat Pal were found not satisfactory. Hence a domestic enquiry was initiated. They participated in the domestic enquiry through Satya Narain, their defence counsel. It has been denied that charge sheets were vague. A claim has been made that it was not expedient to reveal the registration numbers of Refuellers in the charge sheets. It was not expedient on the part of the management to give the details as to how Shri S. S. Patwal hit Refueller R-15 against Refueller R-6. Charge sheet were specific and clear. The Enquiry Officer conducted the enquiry in consonance with the principles of natural justice. Sanjay Walia testified facts on 17-5-04, wherein he detailed all events relating to the misconduct. On being informed by Sat Pal about the accident he reached the spot and found vehicle R-6 in damaged conditions. Shri Sibi Mathew also testified facts before the Enquiry Officer relating to the damage caused to the vehicles. A wrong claim was made that there was no evidence before the Enquiry Officer and his report was perverse. It has been pleaded that punishment awarded to them were commensurate to their misconduct. Claim made by them liable to be dismissed.

7. On pleadings of the parties, following issues were settled.

1. Whether the enquiry conducted by the management was just, fair and proper?
2. As in terms of reference?
3. Relief.

8. Issue No.1, treated as preliminary issue, was answered in favour of Shri S. S. Patwal who took part in

adjudication process and against the management, vide order dated 17-11-2009.

9. To prove misconduct of Shri Patwal management examined Shri Sanjay Walia and Sibi Mathew. Shri S. S. Patwal entered in the witness box to rebut facts testified by the management witnesses. Sat Pal opted not to participate in adjudication process. No evidence worth name was adduced on his behalf.

10. Arguments are heard at the bar. Shri Rajesh Kumar, authorized representative, advanced arguments for the management. Shri K. L. Chhabra, authorized representative, raised submissions for Shri Patwal. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on the issues involved in the controversy are as follows:-

Issue No. 2

11. To prove misconduct of the workman, Shri Walia testified that on 16-12-04 workman was performing his duties on vehicle R-15. He was working as Operator on the said vehicle, while Sat pal was working as helper. At about 12 in the midnight he asked the workman to take out his vehicle and refuel the flight. He immediately left for refueling flight. Within 3-4 minutes Sat Pal came back and informed that vehicle R-15 hit vehicle R-6. He immediately came out of his office and reached the parking area. He found workman sitting on steering wheel of vehicle R-15. He noticed vehicle R-6 badly damaged condition. Vehicle R-15 was in contact with R-6 at that time. During the course of his cross examination, he concedes that he had not witnessed the impact himself. He reached the spot after the impact. Vehicle R-6 was badly damaged while R-6 was in the mode of coming out of parking area. He might have recorded those facts in the lag book or handed over a letter to Shri Pankaj Sharma, the incharge. Cabin R-6 was badly damaged, besides other damage caused to that vehicle. cabin of vehicle R-6 was broken from right hand side.

12. Shri Sibi Mathew gives confirmation to facts testified by Shri Sanjay Walia. He presents that on 17-12-04 he reached his office at Palam Airport Service Facility, New Delhi at 8.50 A. M. After marking his attendance, he went to parking area and found vehicle R-6 and R-15 in an impact condition. Cabin of R-6 was completely damaged. There were some scratches and damages on vehicle R-15 also. He assessed the damage caused to those vehicles. Damage caused to R-16 was around eighteen thousand rupees. He himself had not assessed those damages caused to vehicle R-15. Contractor was called there and R-6 was shown to him. It was sent for repairs. During the course of his cross examination he presents that he has testified before the Enquiry Officer that damages of vehicle R-6 were assessed by him. A contractor from S. K. Automobiles gave estimate in writing, which document was transmitted by him to the management. Bill was raised by the contractor which was paid by the management.

13. Shri Patwal entered the witness box and conceded that vehicle R-6 and R-15 touched together.

However he projects that no damage was caused to vehicle R-6. He highlights that from parking area he straight went and refueled the flight. None asked him about the damage caused to that vehicle till charge sheet was served upon him. He denied that Sanjay Walia reached the spot, where vehicle R-15 and R-6 touched together. He concedes that when he was taking out the vehicle from parking lot, Sat Pal went to inform Shri Walia that their vehicle was going to refuel flight.

14. Out of facts projected by Shri Sanjay Walia, Sibi Mathew and the workman it came over the record that on 16-12-04 Shri Patwal was working as Operator on vehicle R-15. He was commanded to take out his vehicle from parking lot to refuel flight. At about midnight, he along Sat Pal went to parking lot and took out vehicle R-15. In that process vehicle R-15 hit against vehicle R-6. Vehicle R-6 was stationary at that time. The workman tried to project that no damage was caused to vehicle R-6. Shri Sanjay Walia contradicts the stand taken by the workman. He had asserted that on the night of 16-12-04, Shri Sat Pal came and informed him that vehicle R-15 came in contact with vehicle R-6. On that point the workman claims that Sat Pal went to inform Shri Walia to the effect that vehicle R-15 was going to refuel flight. When workman was commanded by Shri Walia to go and refuel flight, there was no occasion for him to sent Sat Pal to inform Shri Walia that the vehicle was being taken out for refueling flight. This explanation is offered by the workman only with a view to present a defence that Sat Pal was sent to inform Shri Walia that they were going to refuel flight. Ordinary human behaviour would suggest facts contrary to those presented by the workman. In case situation would have been normal there was no necessity to send Sat Pal to pass on any information to Shri Walia. Untoward facts occurred and Sat Pal was sent to pass on that information to Shri Walia. Those facts were highlighted by Shri Walia. Therefore out of events unfolded by Shri Walia, it came to light that Sat pal was sent to inform Shri Walia about the impact of R-15 with R-6. This conduct of the workman in sending Sat pal to inform Shri Walia gives support to the testimony of Shri Walia, when he deposed that Sat Pal came to inform him about the accident. Consequently it is evident that Sanjay Walia could bring it over the record that when vehicle R-15 was being taken out of the parking lot by the workman, he hit that vehicle with vehicle R-6. In that impact cabin of vehicle R-6 was badly damaged. Shri Sibi Mathew gives confirmation to those facts and unfolds that cabin of R-6 was completely damaged. Damage worth Rs.18000 was caused to that vehicle.

15. Certified standing Orders were framed by the management, as per provisions of Section 7 of the Industrial Employment (Standing Orders) Act, 1940. It is not disputed by the workman that Certified Standing order were applicable to the management. As per those Certified Standing Orders damaging corporation's property or endangering life of another person amounts to misconduct.

which entails punishment. As testified by Shri Walia and reaffirmed by Shri Mathew workman hit Vehicle against vehicle R-6 and caused damage to it worth Rs. 18000. He was negligent in driving vehicle R-15 when impact with R-6 was caused. Therefore, out of facts detailed by the aforesaid witnesses and admission of facts by the workman, it is evident that the management has been able to prove misconduct of the workman to this effect that by his negligent act he caused damage worth Rs. 18000 to vehicle R-6 which was property of the management.

16. Management has awarded punishment of reduction of basic pay of the workman by Rs. 774 PM, for his misconduct. It was argued by Shri Chhabra that throughout his service career, no other negligence was shown by the workman. It has not been disputed by the management that except the misconduct under consideration, the workman remained vigilant in performing his duties though out his service career. It was single lapse on his part, for which a penalty of reduction of his basic pay by Rs. 774 was awarded to him.

17. Right of an employer to inflict punishment is not unfettered. The punishment imposed must be commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of Section 11-A of the Industrial Disputes Act, 1947 (in short the Act), it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commensurate with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had however, laid down in *Bengal Bhatdee Coal Company* (1963 (I) LLJ 291) that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of Section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct in cases of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to imposed certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

18. It is established law that imposing punishment or a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate,

regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in *Hind Construction and Engineering Company Ltd.* (1965 (I) LLJ 462). Likewise in *Management of the Federation of Indian Chambers of Commerce and Industry* (1971 (II) LLJ 630) the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In *Ram Kishan* (1996 (I) LLJ 982) the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts".

19. In *B. M. Patil* (1996 (II) LLJ 536), Justice Mohan Kumar of Karnataka High Court observed that in exercise of discretion, the Disciplinary Authority should not act like a robot and justice should be moulded with humanism and understanding. It has to assess each case on its own merit and each set of fact should be decided with reference to the evidence regarding the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

20. After insertion of Section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer is commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in *Sanatak Singh* (1984 Lab. I. C. 817). The discretion to award

punishment lessor that the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of the guilt of the workman. Reference can be made to the precedent in *Kachraji Motiji Parmar* (1994 (II) L.J. 332). Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, Section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts, and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

21. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lessor punishment is not untrammelled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Further more, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with/without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference cannot be made to the precedent in *Bhagirath Mal Rainwa* (1995 (I) L.J. 960).

22. Now I would turn to the facts of the present controversy, in order to assess as to whether punishment awarded to Shri S. S. Patwal was commensurate to his misconduct. As emerge out of the record. S. S. Patwal joined services of the management on 1-7-82 and superannuated on 31-10-2007. He rendered services with the management in blameless manner till 16-12-2004. Therefore, for more than two decades S. S. Patwal gave no chance of complaint to his employer. Record tells that only one misconduct was committed by Shri Patwal. His misconduct does not involve moral turpitude. His rash driving resulted in to an accident and damage worth Rs. 18000 was causal to vehicle R-6. No evidence worth name came over the record as to whether Sat Pal omitted to render help in taking out vehicle R-15 from the parking area. Punishment of reduction of basic pay Rs. 774 per month had an effect of financial loss in the earnings of the workman, besides loss in his retiral benefits. These facts make out that the punishment awarded to the workman is not proportionate to his misconduct.

23. What is proper punishment, which ought to have been awarded to the workman? Damage worth Rs.18000 was caused to vehicle R-6, besides the fact that it remained unworthy of road till it was repaired. The workman in under an obligation to make that loss good. What can be quantum of loss for non-user of R-6, till it was repaid? No material is available to assess that loss. Assuming that it took a week in its repair, loss for non -use of R-6 is assessed to Rs.7000. Workman is under an obligation to make loss good to the Corporation, which comes to Rs.25000. Consequently punishment of reimbursement of damages worth Rs.18000+Rs.7000 (total Rs.25000) is awarded to the workman. Punishment awarded to the workman is therefore, modified to the effect that he would make loss of Rs.25000 good to the Corporation and thereafter the management would restore his basic pay and grant him retiral benefits accordingly. In view of the aforesaid findings the punishment awarded to Shri S. S. Patwal was found not to be proportionate to his misconduct and question forwarded by the appropriate Government, for adjudication in respect of Shri S. S. Patwal, is answered accordingly.

Relief

24. Shri Patwal shall make loss of Rs.25000 good to the management and thereafter his basic pay, which was reduced by Rs.774 would be restored by the management and his retiral benefits would be reckoned accordingly. Since Shri Sat Pal had not participated in adjudication process, nor any evidence was adduced on his behalf, it is implicit that he has reconciled with the situation. He opted not to put forward his grievances before this Tribunal. Hence action of the management in reducing his basic pay by Rs.676 per month can not be faulted either on legality or propriety. An award is passed, accordingly. It be sent to appropriate Government for publication.

Dated: 24-2-2010

DR. R. K. YADAV, Presiding Officer

नई दिल्ली, 11 मार्च, 2010

का.आ. 886.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार लक्ष्मी विलास बैंक लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 42/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-3-2010 को प्राप्त हुआ था।

[सं. एल-12012/90/2006-आईआर(बी. 1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 11th March, 2010

S.O. 886.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.42/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure in the

Industrial Dispute between the management of Lakshmi Vilas Bank Ltd. and their workman, received by the Central Government on 11-3-2010

[No. L-12012/90/2006-IR (B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM-LABOUR COURT,
CHENNAI**

Thursday, the 4th March, 2010

Present: A. N. JANARDANAN, Presiding Officer

Industrial Dispute No. 42/2006

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Lakshmi Vilas Bank Ltd. and their Workman)

BETWEEN

Sri. B. Gurunathan : Ist Party/Petitioner

Vs.

The Asstt. General Manager : II Party/Respondent
Lakshmi Vilas Bank Ltd,
Administrative Office, Post Box No.2,
Salem Road, Kathapara, Karur - 639006

APPEARANCES

For the Petitioner : Mrs. P. Chandrasekaran and
Sri P. R. Thiruneelakandan

For the Management : M/s T. S. Gopalan and Co.

AWARD

The Central Government, Ministry of Labour vide its Order No. L-12012/90/2006-IR(B-I) dated 28-7-2006 referred the following Industrial Disputes to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the dismissal of Sri B. Gurunathan by the management of Lakshmi Vilas Bank Ltd. is legal and justified? If not, to what relief the workman is entitled to?”

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as I.D. 42/2006 and issued notices to both sides. Both sides entered appearance through their respective counsel and filed their claim statement later substituted by amended claim statement consequent on the death of the original sole petitioner and impleadment of legal representatives (i) to (iv) as per order of this Tribunal on 1A. The Respondent filed the Counter Statement.

3. A averment in the amended claim statement briefly read as follows:

Since deceased, the first party B. Gurunathan who joined service under the Respondent as a Badli employee in 1990, thereafter regularized from 11-2-1985 as Sub-Staff and later promoted as Clerk on 21-5-1992 was dismissed on 21-8-2004 prior to which he had been transferred to Ariyalur branch on 18-10-1995. Assigning his Clerical work to the Jewel Appraiser Ramesh by the Branch Manager arbitrarily assigned to him duties of Sub-Staff, against it the petitioner complained to the Branch Manager and Head Office disowning responsibility for any deficiency in the work of the Appraiser. Out of animosity of the Branch Manager on this, on 2-6-1999 Sub-Inspector Police, Ariyalur came to the Bank and informed that there is a complaint lodged by the Branch Manager that misusing a cheque Rs. 3,00,000 was fraudulently withdrawn on 25-5-1999 from State Bank of India and that he is a suspect according to the Branch Manager. Himself with another co-employee P.G. Venkatesan was arrested and a criminal case was registered. No attempt has been made by Police to trace out the real culprit. The first party was suspended on 8-6-1999 while under Judicial Custody. During April, 2002, the Asstt. General manager of Head Office, Mr. Raghunathan insisted on giving a confessional statement in writing with a request for pardon which was refused. Thereafter he was made to appear before the Asstt. General Manager, Mylapore on 14-5-2002 where he was threatened and forced to sign two blank papers, which happening he reported to the Asstt. General Manager. On 19-12-2003, the petitioner was charged (i) that he has fraudulently withdrawn a sum of Rs. 3,00,000 causing financial loss to the Bank (ii) acted against the interest of the Respondent and (iii) was disobedient which are false and were denied in the explanation dated 14-1-2004. An enquiry was thereafter initiated on 5-3-2004. He submitted representation for furnishing copies of materials relied upon for the charges. His representations to suspend the enquiry till criminal proceedings are over were not considered. It was informed that the enquiry will be conducted at Tiruvaliyaru branch in which the first party was not able to participate due to sickness. In Writ Petition No. 8004/2004, an interim stay was granted by High Court from conducting the domestic enquiry. After that the enquiry was fixed on 3-7-2004 in which the first party could not participate in connection with his father's Shraddha and by a telegram the enquiry was adjourned which was posted on 14-7-2004. Then again he represented for suspension of the enquiry till finalization of the criminal proceedings which was turned down. The first party did not attend the proceedings out of fear of making innocent statement in the departmental enquiry since the same could be used as material against him in the criminal proceedings. Thereafter the enquiry was posted to 15-7-2004. In fact no enquiry was understood to have been held but the petitione was informed that he was set ex-parte. He was not permitted to sign that day's enquiry proceedings and request to record about the submission of letter was turned down by the Enquiry Officer. He sent a letter objecting the conduct of the enquiry in a biased manner. The petitioner was not given reasonable opportunity to participate in the

enquiry. On 14-8-2004, a second show cause notice together with enquiry report was sent to him proposing dismissal. He also sought for dismissal to be kept in abeyance till the criminal proceedings are over but he was dismissed on 21-8-2004. During the pendency of the ID raised, the first party died in an accident on 26-9-2006 and the petitioners are impleaded as legal representatives. Hence the prayer to set aside the dismissal and to extend all attendant benefits to them.

4. In the Counter Statement, the contentions raised by the Respondent briefly read as follows:

Since 1-4-1999, the first party incharge of miscellaneous section work at the Ariyalur branch. In May 1999 for the period from 18-5-1999 to 31-5-1999 the workman had attended on all the working days between 20-5-1999 and 24-5-1999 except on 21-5-1999. The balance amount in the current account of the branch with State Bank of India was less than Rs. 3.00 lacs. On 25-5-1999, a remittance of Rs. 3.50 lacs was made thus bringing a balance of above Rs. 6.00 lakhs. On 25-5-1999, cheque No. 552435 for Rs. 50,025 was issued for telegraphic transfer of Rs. 50,000 to Madras Office. On 27-5-1999, a remittance of Rs. 3.5 lacs was made through the workman. On 28-5-1999, cheque No. 552436 for Rs. 1,500 was issued. There was further credit of Rs. 2,22,251.95 realised by clearing on 27-5-1999 leaving the credit balance to more than Rs. 7.00 lacs. On 31-5-1999, there was a credit of Rs. 1,89,615.20 bringing the balance to Rs. 9,24, 882.85. On 31-5-1999, Cheque No. 552437 for Rs. 8.25 lacs was sought to be telegraphically transferred to Madras Office which was returned by the State Bank of India stating that there was no sufficient balance in the account and it was found that there was a debit for Rs. 3.00 lacs. On 27-5-1999 by Cheque No. 552438 the counterfoil of which had been removed in the Cheque Book available with the branch. The said cheque was said to have been issued with the signature of Ahiloo, Branch Accountant who was on deputation on that day. The said cheque was drawn in favour of "Ourselves" (Respondent Bank) and was endorsed in favour of one S. Ramesh. A clerk in the branch who had been transferred to Villangudi and not then there in the Ariyalur branch. Further enquiry revealed that the cheque was a forged one. On enquiry by Varadarajan, Inspector of the bank, the cheque No. 552438 was found bearing rubber stamp seal of the branch accountant who informed that the concerned workman who used to visit the State Bank of India encashed the cheque which was recollected by Mr. Anand, Staff member of the State Bank of India according to whom the workman was queried as he had just remitted Rs. 3.50 lacs in the morning why there was a sudden withdrawal of Rs. 3.00 lacs which was replied by him that a nearby branch required cash. It was revealed that during the relevant period the workman alone had the access to the security instruments including the disputed cheque, that he was writing cheques for withdrawal and challans for remittance in the Current Account of State Bank of India. Since he was posting entries in BWOB, he alone had the first hand knowledge of

the credit balance than anyone else. He alone would have been aware of the credit balance in the Current Account on 27-5-1999. Police effected recovery of Rs. 2,92,700 from various persons on information from the workman regarding payments made from the sum of Rs. 3.00 lacs. Immediately after noticing the fraud the Branch Manager could recollect that on 27-5-1999, after returning from clearing the workman left the branch at about 0100 PM and returned only around 0200 PM and went for lunch. On 8-6-1999, the workman was suspended. He was arrested on 5-6-1999. The workman refused to give specimen handwriting to compare with the handwriting in the disputed cheque while other employees readily gave specimen handwriting. On 19-12-2003 with some delay due to records being with the Police, the workman was charge sheeted for the unlawful encashment and also upon his refusal to stay in the Hqrs, as a bail condition. On 14-1-2004, he denied the charges in his explanation. On 20-3-2004 workman did not appear for the enquiry pleading suffering from jaundice. On 16-3-2004, he had visited Ariyalur branch to receive subsistence allowance. On 31-3-2004 workman by a telegram informed that injunction was obtained. WP was dismissed on 24-6-2004. On 3-7-2004, the next day of enquiry he did not appear. On 14-7-2004 he having not come, the enquiry was adjourned in his absence which was under a condition on 3-7-2004 that if he did not turn up on 14-7-2004, the enquiry would be held in his absence. On 14-7-2004, M. S. Ahiloo, M. Ramesh, B. Sudhakaran, Officer HRD Department, A. C. Varadarajan, S. Lalitha, Clerk, Ariyalur branch, S. Suresh Babu, Manager, P. Viswanathan, Manager were examined. The enquiry was held on 14-7-2004, 15-7-2004, 21-7-2004 and 26-7-2004. On 10-8-2004, report on enquiry was prepared holding the charges proved on which date also there was no representation for the workman. On 11-8-2004, the copy of the enquiry report was given to the workman. On 14-8-2004, show cause notice proposing punishment of dismissal and calling him for personal hearing on 21-8-2004 was issued. On 18-8-2004, he gave a reply in which he maintained that the enquiry could not be held in view of pendency of criminal case. By telegram and communication dated 20-8-2004 served on the day, he was asked to appear for personal hearing on 21-8-2004 but he did not appear and the Disciplinary Authority passed the order of dismissal. The dismissal was for acts of misconduct proved in an enquiry and the same should not be interfered with for any reason. It is not correct that the Branch Manager was ill-disposed towards him and therefore he was implicated in fraud. It cannot be said that the workman was arrested without any material. The workman set his face against the enquiry and deliberately wanted to avoid it. He did not turn up for enquiry on any day. Criminal case against him had nothing to do with the charges proved in the enquiry. It is denied that he appeared before the Enquiry Officer on 15-7-2004 or that he was prevented from participating in the enquiry. It is not true that he represented to re-open the enquiry and that no enquiry was held at all. Dismissal of the workman is justified. The claim may be dismissed.

5. At the motion of the learned counsel for the petitioner, the preliminary issue as to whether the enquiry conducted was fair and proper was heard and as per order dated 10-8-2009 it was held that the domestic enquiry is fair and proper.

6. No further oral or documentary evidence has been adduced apart from that at the Preliminary Issue enquiry stage viz. oral evidence of WW1 and Ex.W1 to Ex.W21 and oral evidence of MW1 and Ex.M1 to Ex.M86.

7. Points for consideration are:

(i) Whether the dismissal of the petitioner by the Respondent/Management is legal and justified?

(ii) To what relief the concerned workman is entitled?

Points (i) & (ii)

8. Heard both sides and perused the records and documents. The learned counsel for the petitioner argued that the concerned workman having expired in an accident, his legal heirs 4 in number have been impleaded in the array of the petitioner. It is without prejudice to the right to challenge the finding on the Preliminary Issue dated 10-8-2009 that the arguments are advanced. It is out of the animosity of the Branch Manager against the petitioner for having complained against assignment of duties of Sub-staff to the petitioner that the petitioner has been proceeded against by the impugned action in victimization. The petitioner has been made a scapegoat. He was made to forcibly sign on two blank papers. He has an unblemished past record. He was Charge Sheeted only 4-1/2 years after the alleged incident causing prejudice to him. The finding is perverse without appreciating the evidence. There is no acceptable evidence to prove that the petitioner has forged the signature of Accountant Ahilu and filled up the cheque. The finding is arrived at only on surmises. There is no case in Ex.W-2 (FIR) that the petitioner himself was the culprit. The charge is based on Police investigation and alleged custodial statement of the petitioner which cannot be relied upon in the disciplinary action. No witnesses in the enquiry or no document produced prove that the petitioner had forged the signature of Ahilu and had withdrawn Rs. 3,00,000. The petitioner-Miscellaneous Section Clerk cannot have access to Cheque Book without the knowledge of the Manager/Accountant to whom only has such access. No documentary evidence has been produced by the Management to substantiate the allegation that the petitioner was entrusted with the Cheque Book which is denied by the petitioner as well. In the letters of the Management also it is not stated that cheque book was entrusted with the petitioner or that cheque leaf of the concerned cheque book was removed from the custody of the petitioner. The liability for misuse of the cheque book is to be fixed upon the Branch Manager, custodian of the Cheque Book and the Accountant, custodian of the seal, according to whom the seal which was affixed on the backside of the forged cheque was in his custody. It is impossible for the petitioner to get the payment under

cheque in which endorsement is "Pay to Mr. Ramesh". It is especially so when as according to Mr. Ahilu's version the staff members of State Bank of India, Ariyalur Branch were well aware of staff members of the Respondent/Bank at Ariyalur Branch due to their frequenting visits to the State Bank of India Branch for remittance/withdrawal of cash. No State Bank of India staff has been examined to prove that the petitioner himself has encashed the cheque. It is also pointed out by the learned counsel for the petitioner that due to the workman having resided outside Ariyalur as already explained to the Management, that any prejudice has occasioned to the Bank is not proved. Again the same is not a misconduct enumerated to be so in the Bipartite Settlement. The workman died on 26-9-2006. The workman was not gainfully engaged from the date of suspension viz. 8-6-1999 till death viz. 26-9-2006. Hence the prayer to extend full back-wages and other monetary benefits to the legal heirs-impleaded petitioners.

9. The contra arguments on behalf of the Respondent are that there are speaking circumstances pointing to the involvement of the petitioner in the transaction to the exclusion of any other. They are:- that only the workman had access to the security instruments including cheque book during the relevant period, he was writing the cheques for withdrawal and challans for remittance that he alone had immediate first hand knowledge of the credit balance since he had remitted Rs. 3.50 lakhs and also regarding clearing house credit of Rs. 2,22,251.99 on 27-5-1999, that Anand, Staff of State Bank of India recollected to Varadarajan of Respondent/Bank that the cheque was encashed by the workman alone who was asked as to why the said withdrawal was made when a similar remittance was made on that same day, recovery of Rs. 2,92,700 by Police from various persons on the information furnished by the concerned workman and the fact noticed by the Branch Manager as to the workman leaving the branch at about 1300 Hrs. and returning only at 1400 hrs. and again going for lunch on 27-5-1999.

10. I find that circumstances pointed out by the learned counsel for the Respondent conclusively go to show that it is the workman who is responsible for the misconduct of fraudulent withdrawal of Rs. 3,00,000 by encashing the manipulated cheque. In Industrial adjudication what is required is only evidence of preponderance of probability. No proof beyond doubt is needed. There is no allergy even to hearsay evidence when there is rational nexus and reliable credibility strict rules of evidence are not applicable here. To say that one does not have access to any security instruments or cheque books cannot be a phenomenon invariably true at all moments of a given time. That the petitioner could not have had access to the cheque books or security instruments at any of the moments of a given period is a remote possibility. When one is out to perpetrate a crime, everything could be stage managed or contrived by him to accomplish his purpose. Though, no staff of the State Bank of India has been examined in the domestic enquiry recollection of Anand,

State Bank of India staff revealed to Varadarajan, Respondent/Bank Officer during investigation pointing out the petitioner as the encasher of manipulated cheque, though is a result of the investigation and therefore cannot normally be a piece of evidence in regular courts is still a material together with the other enumerated circumstances which is logically probative to a prudent mind capable of being relied upon to arrive at reasonable conclusions in Industrial Adjudication. Therefore, it cannot be said that the petitioner could not have at all committed the grave misconduct. The finding as well as the punishment imposed on the deceased workman is only to be held as legal and justified and the same does not call for interference. The legal heirs-impeached petitioners are not entitled to any relief.

11. The reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 4th March, 2010)

A. N. JANARDANAN, Presiding Officer

Witnesses Examined:—

For the 1st Party/Petitioner : WW1 Smt. Shanti

For the 2nd Party/Management : MW1 Sri D.
Gurumoorthy

Documents Marked :—

On the Petitioner's side

Ex.No.	Date	Description
Ex.W1	27-5-1999	Cheque No. 552438
Ex.W2	30-6-1999	FIR issued by the District Crime Branch
Ex.W3	8-5-2002	Letter from the Respondent to Gurunathan to contact AGM, DO, Chennai
Ex.W4	15-5-2002	Letter from Gurunathan to AGM, DO, Mylapore Chennai
Ex.W5	26-6-2002	Report of Forensic Science Department
Ex.W6	16-9-2002	Letter from Gurunathan to AGM, Personnel Department, Karur
Ex.W7	19-12-2003	Charge Sheet issued to deceased M. Gurunathan
Ex.W8	14-1-2004	Explanation given by deceased Gurunathan
Ex.W9	March-2004	Writ Petition No. 8004 of 2004 filed by deceased Mr. Gurunathan
Ex.W10	5-8-2004	Telegram given by Gurunathan
Ex.W11	6-8-2004	Notice from Respondent to Gurunathan

Ex.No.	Date	Description
Ex.W12	14-8-2004	Second show cause notice issued to deceased Gurunathan
Ex.W13	18-8-2004	Explanation to the second show cause notice by deceased Gurunathan
Ex.W14	21-8-2004	Minutes of personal hearing
Ex.W15	30-9-2004	Appeal submitted by Gurunathan
Ex.W16	22-11-2004	Proceedings of Appellate Authority
Ex.W17	4-4-2005	Representation to set aside the order of dismissal dated 21-8-2004
Ex.W18	2005	Petition u/s 2A of the ID Act
Ex.W19	2005	Reply statement filed by the Respondent
Ex.W20	2005	Rejoinder statement filed by Gurunathan
Ex.W21	1-11-2006	Death Certificate issued by Kuruchi Municipality, Coimbatore District

On the Management's side

Ex.No.	Date	Description
Ex.M1	9-3-2004	Acknowledgement
Ex.M2	18-3-2004	Letter by petitioner
Ex.M3	28-6-2004	Acknowledgement
Ex.M4	26-7-2004	Acknowledgement for proceedings of 3-7-2004
Ex.M5	20-7-2004	Acknowledgement for proceedings of 15-7-2004
Ex.M6	17-7-2004	Acknowledgement for proceedings of 14-7-2004
Ex.M7	24-7-2004	Acknowledgement for proceedings of 21-7-2004
Ex.M8	26-7-2004	Acknowledgement for notice dated 22-7-2004
Ex.M9	26-7-2004	Acknowledgement for proceedings dated 26-7-2004
Ex.M10	5-3-2004	Enquiry Officer notice
Ex.M11	19-3-2004	Enquiry Officer letter
Ex.M12	19-3-2004	Acknowledgement
Ex.M13	19-3-2004	Enquiry Officer letter to branch
Ex.M14	20-3-2004	Thiruvaiyaru branch letter
Ex.M15	19-3-2004	Thiruvaiyaru branch letter to petitioner

Ex.No.	Date	Description	Ex.No.	Date	Description
Ex.M16	24-3-2004	RPAD- Acknowledgement	Ex.M49	18-12-2001	Letter by Petitioner
Ex.M17	20-3-2004	Acknowledgement	Ex.M50	29-10-2001	Pay slip of October 2001
Ex.M18	25-6-2004	Enquiry Officer notice	Ex.M51	28-5-2003	Bank letter
Ex.M19	14-7-2004	Telegram	Ex.M52	3-5-2002	Ariyalur branch letter
Ex.M20	15-7-2004	Telegram	Ex.M53	24-4-2002	Forensic Science Department letter
Ex.M21	16-7-2004	Letter to Petitioner	Ex.M54	8-5-2002	Bank letter
Ex.M22	22-7-2004	Letter to Petitioner	Ex.M55	20-9-2002	Bank letter
Ex.M23	-	Letter by advocate	Ex.M56	29-5-2002	Bank letter (with enclosures)
Ex.M24	22-7-2004	Enquiry Officer notice	Ex.M57	16-9-2002	Petitioner's letter
Ex.M25	10-8-2004	Finding of Enquiry Officer	Ex.M58	9-6-1999	Inspection Report
Ex.M26	11-8-2004	Disciplinary Authority letter to Petitioner	Ex.M59	27-5-1999	Cheque No. 552438
Ex.M27	20-8-2004	Thiruvaiyaru branch letter	Ex.M60	7-6-1999	Letter by M. S. Ahilu
Ex.M28	20-8-2004	Thiruvaiyaru branch letter to Petitioner	Ex.M61	-	SB A/c No. 6363 Ledger Sheet
Ex.M29	20-8-2004	Acknowledgement	Ex.M62	3-9-2002	Bank letter
Ex.M30	21-8-2004	Final Order	Ex.M63	10-1-2003	Bank letter
Ex.M31	8-9-2004	Proceedings	Ex.M64	13-5-2003	Petitioner's letter
Ex.M32	26-10-2004	Minutes in appeal	Ex.M65	3-5-1999	Ariyalur branch letter
Ex.M33	5-5-2005	Letter to Petitioner	Ex.M66	1-6-1999	Ariyalur branch letter
Ex.M34	20-3-2004	Proceedings of enquiry	Ex.M67	1-6-1999	Ariyalur branch letter
	3-7-2004	Proceedings of enquiry	Ex.M68	31-5-1999	Ariyalur branch letter
	14-7-2004	Proceedings of enquiry	Ex.M69	1-6-1999	State Bank of India letter
	15-7-2004	Proceedings of enquiry	Ex.M70	6-6-1999	Ariyalur Branch letter
	21-7-2004	Proceedings of enquiry	Ex.M71	7-6-1999	Ariyalur Branch letter
	26-7-2004	Proceedings of enquiry	Ex.M72	1-6-1999	FIR
Ex.M35	7-6-1999	Letter by M. S. Ahilu	Ex.M73	-	Fascimile of Branch seal
Ex.M36	27-5-1999	Cheque No. 552438	Ex.M74	10-6-1999	Inspector of Police Letter
Ex.M37	-	BWOB	Ex.M75	-	SB A/c No. 5622 cheques and ledger sheets
Ex.M38	-	Cash movement register-extract	Ex.M76	-	OBC extract
Ex.M39	-	Attendance Register May 1999	Ex.M77	-	Attendance Register June 1999
Ex.M40	31-5-1999	Cheque return memo	Ex.M78	-	Statement of Account
Ex.M41	31-5-1999	Cheque No. 552437	Ex.M79	12-6-1999	State Bank of India Letter
Ex.M42	31-5-1999	T.T Application	Ex.M80	30-7-1999	State Bank of India Letter
Ex.M43	31-5-1999	Current Account Pay Slip	Ex.M81	27-5-1999	3 Vouchers
Ex.M44	8-6-1999	Proceedings of Disciplinary Authority	Ex.M82	27-5-1999	Cartage Voucher
Ex.M45	29-7-1999	Letter by Petitioner	Ex.M83	27-5-1999	Cash Remittance Voucher
Ex.M46	9-10-1999	Letter by Petitioner	Ex.M84	25-5-1999	IBIT
Ex.M47	3-1-2001	Letter by Petitioner	Ex.M85	-	ID Card of petitioner
Ex.M48	28-9-2001	Bank letter	Ex.M86	2-6-1999	Daily Thanthi- Paper Extract
				2-6-1999	Dina Malar—Paper Extract

नई दिल्ली, 11 मार्च, 2010

का.आ. 887.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कैथोलिक सीरियन बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, एरनाकुलम के पंचाट (संदर्भ संख्या 334/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-3-2010 को प्राप्त हुआ था।

[सं. एल-12011/9/2006-आईआर(बी.1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 11th March, 2010

S. O. 887.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 334/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in Industrial Dispute between the management of Catholic Syrian Bank and their workmen, which was received by the Central Government on 11-3-2010.

[No. L-12011/9/2006-IR(B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM**

Present : Shri P. L. Norbert, B.A., LL.B., Presiding Officer
(Friday, the 19th day of February, 2010/30th Magha, 1931)

I. D. 334/2006

Union : The General Secretary,
Catholic Syrian Bank Staff Association,
Kalliyath Royale Square, Palace Road,
Thrissur-680020.

By Adv. Shri Ashok B. Shenoy.

Management : The Chairman,
Catholic Syrian Bank,
Head Office, College Road,
Thrissur (Kerala).

By Adv. M/s. B.S. Krishnan Associates

This case coming up for hearing on 17-2-2010, this Tribunal-cum-Labour Court on 19-2-2010 passed the following :

AWARD

This is a reference made under Section 10 (1) (d) of Industrial Disputes Act. The reference is :

"Whether the action of the management of Catholic Syrian Bank in not implementing the terms and conditions of 8th Bipartite All India Settlement is fair and justifiable ? If not, what relief its employees are entitled to?"

2. The facts of the case in brief are as follow:—
The Catholic Syrian Bank Staff Association has raised the dispute that the action of the management in not implementing the terms and conditions of the 8th Bipartite Settlement is not legal and justified. According to them the 8th Bipartite Settlement is made between Indian Banks' Association and All India Federation of Bank Employees in All India level. Without implementing the terms of 8th Bipartite Settlement the management Bank (Catholic Syrian Bank) revised the wages and other benefits payable to employees by issuing a circular which is almost in tune with 8th Bipartite Settlement. But all the terms of the Settlement are not implemented. The appointment orders given to the employees mention that the service conditions will be governed by Bipartite Settlements from time to time. The conduct of the management in not implementing 8th Bipartite Settlement is breach of the promise in appointment orders and a change in service condition without notice is violation of S.9-A of Industrial Disputes Act and is an unfair labour practice. When all other banks of IBA has implemented the settlement the action of the management is discriminatory.

3. According to the management the present union is a minority union. The major unions have not raised any complaint or dispute regarding enforcement of 8th Bipartite Settlement. Hence the dispute is not maintainable. The management bank was not a member of Indian Bank Association (IBA) during the 8th Bipartite Settlement. Hence the management is not bound to implement the terms of 8th Bipartite Settlement. Whenever the Bank was a member of IBA it had implemented the terms of periodical settlements. However the bank had taken a decision to revise the salary and other benefits of employees and for that purpose issued a circular dated 18-8-2005. The management has not denied any benefit hitherto enjoyed by the employees. The IBA has not entered into a Settlement with the present union. By virtue of the circular financial benefits not less than those provided in the 8th Settlement, were in fact given to employees. The dispute is not tenable and the claim is to be rejected.

4. In the light of the above contentions the only point that requires consideration is :

Whether the 8th Bipartite Settlement is binding on the management bank?

5. The evidence consists of the oral testimony of WW-1 and documentary evidence of Exts. W-1 to W-13 on the side of the union and MW-1 and Exts. M-1 to M-6 on the side of the management.

6. **The Point:**—Ext. W-7 is the 8th Bipartite Settlement entered into between Indian Banks' Association (IBA) and All India Bank Employees' Association dated 2-6-2005. It is a Settlement made under Section 18(1) of Industrial Disputes Act. It is operative w.e.f. 1-11-2002 for a period of 5 years. Schedule-I of Ext. W-7 (page 35) contains a list of Banks who were parties to the Settlement. Fifty Banks had signed the Settlement. Among them the Catholic Syrian Banks is not a party. Ext. M6 is a letter dated 26-5-2001 issued by IBA to the Chairman and Chief Executive Officer of Catholic Syrian Bank stating that the resignation of Catholic Syrian Bank from the ordinary membership of IBA was placed before Managing Committee and was accepted by the Managing Committee and accordingly, the Catholic Syrian Bank ceased to be a member of IBA w.e.f. 1-10-2000.

7. The contention of the union is that the management bank had all along been implementing settlements that were signed periodically by IBA and All India Federation of Bank Employees and other unions. The appointment orders issued to employees contained a clause that the employees would be governed by Bipartite Settlements signed from time to time. The non-implementation of the 8th Bipartite Settlement dated 2-6-2005 is in violation of S. 9-A of I.D. Act. Exts. W-6 and 7 referred above show that since 1-10-2000 the Catholic Syrian Bank is not a member of Indian Banks' Association. The 8th Bipartite Settlement is operative w.e.f. 1-11-2002 for a period of 5 years. The management bank was not a party to the settlement as per Schedule-I of the settlement. That being the position it can no more be argued that the management is bound to enforce the 8th Bipartite Settlement. The settlement shows that it is a settlement arrived under Section 18(1) of I.D. Act which can bind only the parties to the settlement and not others. By reason of non implementation of a settlement to which the management is not a party, it cannot be said that there is violation of Section 9-A of Industrial Disputes Act. As per S.9A when service conditions are proposed to be changed by the employer a notice has to be given to the union or employees before the proposal is finalised. But there is no logic in saying that by not implementing the 8th Bipartite Settlement the employer has changed the service conditions of employees. The contention lacks merits. To prior Bipartite Settlements up to the 7th Bipartite Settlement, the management bank was a party and was a member of IBA. The 7th Bipartite Settlement was implemented in toto and was in force till the expiry of its term in 2002. In the absence of a further settlement the terms of the earlier settlement has to continue. However, in 2005 Ext. W-8 circular dated 18-8-2005 was issued by the management revising the salary and other benefits of employees. Most of the benefits were effective from 1-11-2002 as per the circular. It is not seriously disputed by the management that many of the benefits given as per the circular are similar to those in the 8th Bipartite Settlement. But does it mean that the bank is

bound to enforce all the terms of 8th Bipartite Settlement. It is the discretion of the management to decide what should be the benefit to be given to the employees. However, since the bank is not a party to the Settlement they are not bound to implement its terms. Just because some of the terms of the circular are similar to the terms of 8th Bipartite Settlement the union cannot contend that the remaining terms also should be on a par with the Settlement.

8. The next contention of the union, that since the appointment orders (Exts. W-3 to 6 and 13) contain a clause that the employees will be governed by the terms of Bipartite Settlements applicable to the bank employees, the management is bound to implement all Bipartite Settlements, is equally untenable. It is pointed out by the union that similar stipulation is contained in Exts. W-1 and 2 paper publication inviting applications for the post of Clerk. Hence bank is bound to implement all Bipartite Settlements. There is no merit in the contention. After the 7th Bipartite Settlement, there is neither an All India Level Settlement nor a settlement with the local union. Hence there is no settlement to be implemented.

9. It was lastly contended by the learned counsel for the union that the circular, Ext. W-8 was issued unilaterally by the management without complying with S.9-A of Industrial Disputes Act. The Section reads :—

“9-A. **Notice of Change** - No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,—

(a) without giving to the workmen likely to be affected by such a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice.”

It is to be noted that the validity of circular is not an issue referred for adjudication. The only dispute that is referred is whether the conduct of management in not implementing the terms of 8th Bipartite Settlement, is fair and justified. Thus the circular is not questioned by the union. The pleading in para -6 of the claim statement is that the non-implementation of the terms of 8th Bipartite Settlement is violative of S.9-A of I.D. Act and not that the issuance of circular is in violation of S.9-A. In the absence of a reference no adjudication is called for on that issue.

For the reasons stated above I hold that the action of the management in not implementing the terms and conditions of 8th Bipartite Settlement is legal and justifiable and the union is not entitled for any relief.

The Award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 19th day of February, 2010.

P. L. NORBERT, Presiding Officer

Appendix**Witness for the Union**

WW1- 22-07-2009 - Jimmy C. Akkarappatty.

Witness for the Management

WW1- 26-10-2009 - M. Vasudevan.

Exhibits for the Union

W1 - Original copy of paper cutting advertisement for the recruitment of Trainee Typist-cum-Clerk/trainee Stenographer-cum-clerks by the management in the Malayala manorama daily.

W-2- Original copy of the paper cutting advertisement for the recruitment of Probationary Clerks-cum-Cashiers by the management in Malayala Manorama daily.

W-3- True copy of appointment letter dated 22-4-1994 issued by management to workman Sri D. Bhaskar.

W-4- True copy of appointment letter dated 7-4-1998 issued by the management to workman, Sri V.N.Gangadharan.

W-5- True copy of appointment letter dated 7-4-1998 issued by management to workman, Sri M. Sreedharan.

W-6- True copy of letter dated 27-12-2003 issued by management to workman, Sri Stephen Jebraj.

W-7- Original of the 8th Bipartite Settlement dated 2-6-2005 between Indian Bank Association and All India Bank.

W-8- True copy of circular No. 164/2005/BC/S-29 dated 18-8-2005 issued by the management.

W-9- Office copy of letter dated 2-11-2005 submitted by union to the Chairman of the management.

W-10- True copy of the representation dated 9-1-2006 submitted by union to Assistant Labour Commissioner (C), Kochi.

W-11- True copy of the written comments dated 6-2-2006 submitted by management to Assistant Labour Commissioner (C), Kochi.

W-12- True copy of the representation dated 7-3-2006 submitted by union to Assistant Labour Commissioner (C), Kochi.

W-13- True copy of appointment letter No. S-1349/94 dated 5-3-1994 issued by management to Sri K. V. Chako.

Exhibits for the Management

M-1- True copy of the letter of appointment issued by the management bank in favour of Sri Vishin K.S. dated 28-10-2008.

M-2- True copy of the letter of appointment issued by the management bank in favour of Sri Sreejith M. dated 4-1-2007.

M-3- True copy of the letter of appointment issued by the management bank in favour of Sri Renny P.C. dated 4-1-2007.

M-4- True copy of the letter of appointment issued by the management bank in favour of Smt. Lissy J. Pulikkal dated 25-11-2005.

M-5- True copy of the letter of appointment issued by the management bank in favour of Sri Rinson Austin Sebastin dated 4-1-2007.

M-6- True copy of the letter of Indian Banks' Association dated 26-5-2001 accepting the resignation of the Catholic Syrian Bank from IBA.

नई दिल्ली, 11 मार्च, 2010

का.आ. 888.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 42/2005, 44/2005 और 44/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-3-10 को प्राप्त हुआ था।

[सं. एल-12012/24 और 25/2005-आईआर(बी.1)]

[सं. एल-12011/44/2008-आईआर(बी.1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 11th March, 2010

S. O. 888.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 42/2005, 44/2005 & 44/2009) of the Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh as shown in the Annexure in Industrial Dispute between the management of State Bank of India and their workman, which was received by the Central Government on 11-3-2010.

[No. L-12012/24 & 25/2005-IR(B-1)]

[No. L-12011/44/2008-IR(B-1)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

Case No. I.D. 42/2005, 44/2005 & 44/2009

Shri Kanshi Ram Aggarwal,
S/o Shri Udami Ram,
C/o Shri J.G. Verma,
General Secretary,
SBI Staff Congress,
Chandigarh Circle, 3030/1,
Sector-22-D, Chandigarh.

... Applicant

Versus

The Assistant General Manager,
State Bank of India,
R-III, Zonal Office (Haryana)
Panchkula (Haryana).

...Respondent

APPEARANCES

For the workman : None
For the management : Shri V.K. Sharma

AWARD

Passed on : 23-2-2010 Camp Court, Bhiwani

Central Government has referred the following industrial disputes to this Tribunal for adjudication :

1. ID No. 42/2005, Ref. No. L-12012/24/2005-IR (B-I), dated 15-9-2005, "Whether the action of the Management of State Bank of India, Panchkula in imposing the punishment of removal from service to Shri Kanshi Ram Aggarwal w.e.f. 18-4-2003 is legal and justified? If not, to what relief the concerned workman is entitled to?"
2. ID No. 44/2005, Ref. No. L-12012/25/2005-IR (B-I), dated 27-10-2005, "Whether the action of the Management of State Bank of India, Panchkula in imposing the punishment of reduction of pay of Shri Kanshi Ram Aggarwal with two stages with effect from 20-2-2003 is legal and justified? If not, to what relief the concerned workman is entitled to?"
3. ID No. 44/2009, Ref. No. L-12011/44/2008-IR (B-I), dated 11-6-2009, "Whether the action of the Management of State Bank of India, in not passing the medical bills for the period of 4-5-2001 to 25-2-2003 amounting to Rs. 23, 449/- (Rupees twenty three thousand four hundred and fourty nine) of Shri Kanshi Ram Aggarwal, is just, fair and legal? If not, to what relief the concerned workman is entitled and from which date?"

All the above references are taken up at camp Court Bhiwani at 10.30 A.M. No one is present for the workman. Learned Law Manager of management of State Bank of India Shri V. K. Sharma is present. On repeated calls workman is not present. This arrangement for conducting Camp Court at Bhiwani was made just for the conveyance of the workman on his request as he belongs to Bhiwani itself. On perusal of the order sheet in all the three references, it is evident that workman has not put up appearance in Chandigarh Court on number of dates. Learned Counsel for the workman was informed to ensure the presence of the workman in person at Bhiwani Camp Court. On repeated

calls no one is present despite information. As per order sheets there is a proper information for fixing date of Camp Court held for convenience and on request of the workman, to the workman as learned counsel for the workman was present on the last date of hearing but the workman failed to ensure his presence as usual. Accordingly, this Tribunal has no option other than to return the references for want of prosecution as workman failed to appear to pursue his references. All the above three references are returned to Central Government for want of prosecution. Central Government be informed. File be consigned. A copy of the order be filed in each reference.

Chandigarh,
23-2-2010 Camp Court
Bhiwani

G.K. SHARMA, Presiding Officer

नई दिल्ली, 11 मार्च, 2010

का.आ. 889.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 79/1990) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-3-10 को प्राप्त हुआ था।

[सं. एल-12012/9/89-आईआर(बी-1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 11th March, 2010

S. O. 889.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 79/1990) of the Central Government Industrial Tribunal-Cum-Labour Court-1, Dhanbad as shown in the Annexure in Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 11-3-10.

[No. L-12012/9/89-IR(B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO. 1, DHANBAD**

In the matter of a reference U/s 10(1)(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 79 of 1990

Parties : Employers in relation to the management of State Bank of India

And

Their Workmen

Present : Shri H.M. Singh, Presiding Officer.

APPEARANCES

For the Employers : None.

For the Workmen : None.

State : Jharkhand. Industry : Bank.

Dated: the 23rd February, 2010

AWARD

By Order No. L-12012/9/89-IR(B-3) dated 18-4-90 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal.

“Whether the action of the management of State Bank of India in terminating the services of Shri Sadanand Singh, who was employed as Messenger of Rangamati, Harmoo Housing Colony, Lodma and Doranda Branches and then not considering him for permanent absorption in the service of the Bank was justified? If not, to what relief the workman is entitled and from which date?”

2. Written statement has been filed on behalf of the concerned workman stating that Sadanand Singh after oral interview was appointed as messenger on daily wage basis w.e.f. 1-1-1979 at SBI Doranda Branch, Ranchi and worked upto 26-6-81. He used to work full days on all week days and half day on Saturday. He was being paid from Petty Cash a meagre sum of Rs. 6.50 per day and gradually it was increased upto Rs. 12.40 paise. After continuous service with occasional break in SBI Doranda Branch about 3 years he was appointed as messenger with full pay scale as per Bi-partite Settlement at SBI Rangamati Branch, Ranchi w.e.f. 27-6-81 for 90 days. Then he was appointed for 35 days at Harmoo Housing Colony Branch, Ranchi w.e.f. 16-12-81 and for 90 days at SBI Lodma Branch. He already worked for 240 days in 12 calendar months for several occasion during the period 1979 to 1982. Since the concerned workman has worked for 215 days within 12 calendar months with scale wages as per Bi-partite settlement of messengers and more than 500 days within 36 calendar months on daily wage basis he was entitled for appearing before the interview and on the basis of length of service he was supposed to be absorbed in the Bank as a permanent employee. But the management did not allow him to appear before the interview. Seeing no other alternative an industrial dispute was raised before A.L.C. but due to adamant attitude of the management conciliation proceeding ended in failure, resulting to the present dispute.

It has been prayed that the Hon'ble Tribunal be pleased to give an award in favour of the workman holding him entitled for permanent appointment in the Bank as messenger w.e.f. his appointment in the Bank as messenger w.e.f. 1-1-79.

3. The management has filed written statement stating that the concerned workman, Sadanand Singh was appointed on purely temporary basis as messenger for certain fixed period as per contract unauthorisedly and in violation of Bank's rules. Instructions, policies binding on him at Rangamati, Harmoo Housing colony and Lodma branches of the Bank within Ranchi module as per details given hereunder :

Rangamati Branch -27-6-81 to 24-9-81 = 90 days.

Harmoo Housing -16-12-81 to 18-1-82 = 34 days.

Colony Branch.

Lodma Branch -5-4-82 to 30-4-82 =26 days.

1-5-82 to 31-5-82 =31 days

1-6-82 to 3-7-82 = 33days

The aforesaid temporary appointments were void ab-initio for the reasons that he was not eligible for the appointment for being underage and minor during the material time and that the Branch Managers had no authority to make such appointments. While the minimum age for appointment as a messenger in bank is 18 years. Shri Singh was around 14 to 15 years old of the time of aforesaid appointments as his admitted date of birth is 1-5-1967.

In rejoinder the management has denied the fact that the concerned workman worked from 1-1-79 upto 26-6-81. It has been stated that Sri Singh worked as casual labour with breaks on certain dates at Doranda Branch in 1979 only 3 days, in 1980 only 78 days and in 1981 only 37 days. It has also been denied that Sri Singh was appointed at Doranda Branch as temporary messenger and he worked there as a permanent messenger or on overtime as has been alleged by the union.

4. Rejoinder has been filed on behalf of the concerned workman stating almost same facts as has been stated in his written statement.

5. Notices were sent to the parties on 29-6-2009 fixing the date on 12-8-2009 for hearing arguments. But none of the parties appeared on that date. Again the case was adjourned to 28-8-2009 for the same purpose. Even on that none appeared from either side. Thereafter the case was closed for passing of the award.

6. The concerned workman produced himself as WW-1. The management has produced MW-1-P.K. Mukherjee who has proved documents marked as Ext. M-1 to Ext. M-12. The management also produced MW-2-P. Kumar.

7. No argument was advanced on behalf of either party.

8. The concerned workman, WW-1. Sadanand Singh is stated in cross-examination at page 2 that he has filed

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application, Ext. M-11, which shows that Ext.M-11 is application for appointment in which his date of birth has been mentioned as 1-5-1967. It shows that he was minor at the time of his initial appointment when he joined in service on 1-1-79 as messenger and he worked at Rangamati Branch in 1981, so when he has worked from 1979 to 1981 at that time he has not completed 18 years of age and he was minor. WW-1 in cross-examination also stated that "I had worked at Doranda Branch twice, as stated earlier, but I was given no document to show that I has worked there." He has also stated "I cannot say as to for how many days I had worked during 1982 to 1985." He has stated on asking by the Tribunal that the date 1-5-67 as his date of birth has been given at the top portion of his application, Ext. M-11. So he cannot be given any benefit for appointment as he had not completed 18 years of age at the initial appointment. Moreover, he has not filed any appointment letter which may give terms and conditions of his appointment. The letters which have been filed by the management. Exts. M-2, M-3 and M-4 he was given 90 in total appointment in the months of April, May and June, 1982. Ext. M-5 is the circular issued by the management for eligibility criteria for recruitment of subordinate staff and Ext. M-6 is circular issued by the Bank that who has completed 90 days in 12 calendar months may be registered for regularisation and recruitment in the Bank. Ext. M-8 transfer certificate shows his date of birth as 1-5-67. Ext. W-2 shows that the concerned workman was engaged in June, 1981 and his date of birth has been given as 1-5-67 which shows that at that time he was below 18 years of age, so his case cannot be considered and cannot be regularised as at the time of appointment he was below 18 years of age and no benefit can be given to him and there is no other factor giving reasons for not selecting him before Interview Board. The management cannot appoint and cannot give any benefit to the concerned workman as per Circular which is basis of appointment because even if he is found to be suitable even then he cannot, be regularised because of the fact that he was below 18 years of age. Regarding completion of 90 days in a calendar year from 1982 to 1985 he has not filed any document showing that he has worked or he has got appointment during this period.

9. In view of the above facts and circumstances, I hold that the action of the management of State Bank of India in terminating the services of Shri Sadanand Singh, who was employed as Messenger at Rangamati, Harmoo Housing Colony and Lodma and Doranda Branches and then not considering him for permanent absorption in the service of the Bank was justified and the concerned workman is not entitled to any relief.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 11 मार्च, 2010

का.आ. 890.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ बिकानेर के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-1, दिल्ली के पंचाट (संदर्भ संख्या 19/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-3-2010 को प्राप्त हुआ था।

[सं. एल-12011/37/2009-आई आर(बी. I)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 11th March, 2010

S.O. 890.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2010) of the Central Government Industrial Tribunal-cum-Labour Court-1, Delhi as shown in the Annexure in Industrial Dispute between the management of State Bank of Bikaner and their workman, which was received by the Central Government on 11-3-2010.

[No. L-12011/37/2009-IR(B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1, KARKARDOOMA COURT
COMPLEX, DELHI

I.D.No. 19/2010

The General Secretary,
State Bank of Bikaner & Jaipur Employees Union (Delhi)
P-4/90, Connaught Circus,
New Delhi-110001

Claimant

Versus

The Deputy General Manager,
State Bank of Bikaner & Jaipur,
Zonal Office, Ahinsa Bhawan,
Shanker Road,
New Delhi.

Management

AWARD

1. State Bank of Bikaner and Jaipur Employees Union raised a demand for absorption of Mrs. Renu Rawat in the services of State Bank of Bikaner and Jaipur, New Delhi as Computer Operator. The said demand was not conceded to. Consequently, the union raised a dispute before the Conciliation Officer. The Bank disputed the demand so raised. It resulted into failure of the conciliation proceedings. When failure report was submitted to the

appropriate Government, it referred the dispute to this Tribunal for adjudication, vide Order No. L-12011/37/2009 IR (B-I), New Delhi, dated 18-1-2010, with the following terms:—

“Whether there was any employee-employer relationship between Mrs. Renu Rawat and the management of State Bank of Bikaner & Jaipur, New Delhi? If so, whether the demand of the State Bank of Bikaner & Jaipur Employees Union (Delhi) for absorption of Mrs. Renu Rawat on permanent basis as Computer Operator in the Bank's service, is legal and justified? If so, to what relief she is entitled?”

2. The appropriate Government commanded the claimant union to file a claim statement within a period of 15 days from the date of receipt of the reference order. Despite that command, no claim statement was filed by the union.

3. A notice was sent to the claimant union by registered post on 11-2-2010 to file its claim statement. Neither the postal article was received back nor anyone appeared on behalf of the claimant union. Every presumption lies in favour of the fact that the registered notice was served on the claimant union. Despite service of the notice, the claimant union opted not to file a claim statement.

4. Non-filing of a claim statement gives an inference that the claimant union or Mrs. Renu Rawat is not interested in putting forward their grievance before this Tribunal. When claimant union opts not to file a claim statement, it is implicit that the dispute stands subsided. Accordingly a no dispute award is passed. It be sent to the appropriate Government for publication.

DR. R. K. YADAV, Presiding Officer

नई दिल्ली, 11 मार्च, 2010

का.आ. 891.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हरियाणा ग्रामीण बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 41/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-3-2010 को प्राप्त हुआ था।

[सं. एल-12011/26/2008-आईआर(बी. I)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 11th March, 2010

S.O. 891.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.41/2009) of the Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh as shown in the Annexure in Industrial

Dispute between the management of Haryana Gramin Bank and their workmen, received by the Central Government on 11-3-2010.

[No. L-12011/26/2008-IR(B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE SHIRIGYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL -CUM-LABOUR COURT-I,
CHANDIGARH

Case I. D. No. 41/2009

Union Through General Secretary, Haryana Gramin Bank
Workers Organisation, Vill. & P.O.: Bapra, Distt. Bhiwani.

..... Applicant

Versus

The Chairman, Haryana Gramin Bank H.O. 1st floor, Co-opt.
Bank Building, Delhi Road, Rohtak. Respondent

APPEARANCES

For the workman : None.

For the management : Shri S.N.Sharma.

AWARD

Passed on 9-2-2010.

The Government of India vide notification No. L-12011/26/2008-IR (B-I) dated 25-5-2009, by exercising its powers under Section 10 of the Industrial Disputes Act, (the Act in short) has referred the following industrial dispute for adjudication to this Tribunal:—

“Whether the demand of General Secretary, Haryana Gramin Bank Workers Organisation, Vill. & P.O. Bapora, Distt. Bhiwani for providing the facilities of newspapers to the clerical and subordinate staff of Haryana Gramin Bank at par with the employees of sponsoring Bank i.e. Punjab National Bank, is just, fair and legal? To what relief are the concerned workman entitled?”

2. Case repeatedly called. None appeared on behalf of the Union who espoused the case. On perusal of the record, it reveals that none is appearing on behalf of the union for the last several dates. Claim statement also not filed by the union. It appears that union is not interested to pursue with the present reference. In view of the above, the present reference is returned to the Central Government for want of prosecution. Central Government be informed. File be consigned.

Chandigarh.
9-2-2010

G. K. SHARMA, Presiding Officer

नई दिल्ली, 12 मार्च, 2010

का.आ. 892.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भिलाई स्टील प्लांट भिलाई दुर्ग के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 28/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-3-2010 को प्राप्त हुआ था।

[सं. एल-26012/8/2008-आईआर(एम)]

कमल बाखरू, डेस्क अधिकारी

New Delhi, the 12th March, 2010

S.O. 892.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.28/2008) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in Industrial Dispute between the employers in relation to the management of Bhilai Steel Plant, Bhilai, Durg and their workman, which was received by the Central Government on 12-3-2010.

[No. L-26012/8/2008-IR(M)]

KAMAL BAKHRU, Desk Officer

ANNEXURE

**BEFORE SHRI A. N. YADAV, PRESIDING OFFICER,
CGIT-CUM-LOUR COURT, NAGPUR**

Case No. CGIT/NGP/28/2008 Date: 23-2-2010

Petitioner/ : The Secretary,
Party No. 1 : Chhattisgarh Sangrami Shramik
Sangh, Indira Nagar, Chandaini
Bhatta, P.O. : Dallirajhara, Durg
(Chhattisgarh)

Versus

Respondent/ : The Managing Director,
Party No. 2 : Bhilai Steel Plant, Bhilai, Durg,
Chhattisgarh.

AWARD

(Dated: 23rd February, 2010)

1. The Central Government after satisfying the existence of dispute between the Secretary, Chhattisgarh Sangrami Shramik Sangh, Indira Nagar, Dallirajhara, Durg (Chhattisgarh) (Party No. 1) and the Managing Director, Bhilai Steel Plant, Bhilai, Durg (Chhattisgarh) (Party No. 2), referred the same for adjudication to this Tribunal vide its letter No. L-26012/8/2008-IR(M) dated 26-8-2008 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) with the following Schedule.

2. "Whether the action of the management of Bhilai Steel Plant (SAIL) in their Iron Ore Complex, Dallirajhara, Durg in punishing Shri S. K. Verma, Sr. Operator, HEME with the punishment of 'Reduction by two stages in the time scale (S-07) reducing his basic pay from Rs. 7384 to 7072 PM in the scale S-07 w.e.f. 1-10-2005 for a period of 2 years with cumulative effect' vide letter of punishment No. OMQ/DLM/ESTT/PUN/2005/1846 dated 22-9-2005 of Dy. G. M. Dalli Mech. Mines is justified? What relief the workman is entitled to?"

3. The case was fixed at Bilaspur Camp as the petitioner is the resident of that area. Initially, on reference the petitioner was served with the notice to appear before this tribunal at Nagpur, but despite of service he did not appear. Similarly, the case was fixed on 2 occasions for appearing at Bilaspur camp. At that time also he was served with the notices to appear before this Court. However, he did not attend any of the camp. It appears that the petitioner is not interested in prosecuting the case. Hence, it is dismissed for his default and no dispute award has been passed.

Dated: 23-2-2010

A. N. YADAV, Presiding Officer

नई दिल्ली, 12 मार्च, 2010

का.आ. 893.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय विमानपत्तन प्राधिकरण के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 12/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-3-2010 को प्राप्त हुआ था।

[सं. एल-11012/10/2005-आईआर(एम)]

कमल बाखरू, डेस्क अधिकारी

New Delhi, the 12th March, 2010

S.O. 893.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2006) of the Central Government Industrial Tribunal/Labour Court, New Delhi-1 now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Airport Authority of India and their workman, which was received by the Central Government on 12-3-2010.

[No. L-11012/10/2005-IR(M)]

KAMAL BAKHRU, Desk Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CGIT NO.1, KARKARDOOMA COURTS COMPLEX,
DELHI**

I.D. No. 12/2006

Shri Balraj s/o Shri Prem Singh,
House No.103, Rishi Nagar,
Rani Bagh, New Delhi-110034

Workman

Versus

The Airport Director
(International Airport Division)
Airport Authority of India, IGIA,
Airport, New Delhi-110034

Management

AWARD

1. Prem Singh was serving as Safaiwala with Airport Authority of India (hereinafter referred to as the management). He expired on 4-12-2000, while on duty. His son, Namely, Balraj moved an application for compassionate appointment. His request was considered and he was appointed as Junior Attendant (Safaiwala). He joined his duties on 14-11-2002. Though he was on probation for a period of one year, yet he was irregular in performance of his duties. Minor penalty for unauthorized absence was awarded to him during the period of his probation. His period of probation was extended thrice. When his work was found unsatisfactory, the management decided to dispense with his services. His explanation was called, which was found to be unsatisfactory. Ultimately his services were dispensed with w.e.f. 17th of January, 2005. He raised a demand for reinstatement before the Conciliation Officer. When no settlement could arrive at, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.-L-11012/10/2005-IR (M), New Delhi, dated 21st of April, 2006, with the following terms :

“Whether the termination of Shri Balraj from the management of Airport Authority of India w.e.f. 17-1-2005 is just, fair and legal? If not, to what relief the workman is entitled to and from which date?”

2. Claim statement was filed by Shri Balraj pleading therein that he was appointed as junior attendant (safaiwala) on compassionate ground. He was put on probation for a period of one year w.e.f. 14-11-2002. He claims that he stood automatically confirmed on that post on 14-11-2003. Action of the Management in extending his period of probation vide letters dated 6-2-2004, 12-4-2004 and 14-6-2004 is illegal. When he acquired a status of permanent employee, his service could not be dispensed with or without giving an opportunity of being heard. He projects that his dismissal amounts to punishment and the

same is violative of the principles of natural justice. He seeks his reinstatement in service, with continuity and full back wages.

3. Management demurred his claim pleading that since work and conduct of the claimant was unsatisfactory, his probation was extended from time to time. It has further been pleaded that during his period of probation, he remained absent unauthorisedly and was awarded punishment of stoppage of increment, which was due to him in July, 2004. When his work and conduct was not to the satisfaction of the management, a show cause notice was served upon him. Comments of his reporting officer were sought. His services were dispensed with in terms of the contract, as contained in letter of appointment. Action of the Management is justified. His claim is liable to be dismissed.

4. The matter was listed for evidence of the parties. Workman opted not to put in appearance in the matter. Cause was proceeded under rule 22 of the Industrial Disputes (Central) Rules, 1957. Management examined Shri Manoj Kumar, Senior Manager in support of its case. No other witness was examined.

5. Arguments were heard at the Bar. Shri Firoz Ahmed, authorised representative, advanced arguments on behalf of the management. None was there to raise submissions for the workman. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on the issues involved in the controversy are as follows :

6. Shri Manoj Kumar testified that when Prem Singh, father of the claimant, expired on 14-12-2000, the claimant moved an application for compassionate appointment. He was offered a post of a Junior Attendant (Safaiwala) vide order dated 30-9-2002, copy of which is Ex-MW1/1. It is not disputed that the claimant joined his duties on 14-11-2002. He was to remain on probation for a period of one year. His period of probation was extended from time to time vide order Ex.MW1/3, Ex.MW1/4 and Ex.MW1/5 respectively. During his period of probation a charge sheet was served upon him, copy of which is Ex.MW1/11. A penalty was imposed upon him vide order Ex. MW1/12. When his work and conduct was found not satisfactory a show cause notice was issued to him, which is Ex.MW1/6. He failed to file reply to the said show cause notice, hence reminder Ex.MW1/7 was issued. Reply Ex.MW1/8 was filed. Comments of his reporting officer were sought, which is Ex.MW1/10. Since his work and conduct were not satisfactory, his service were terminated vide order Ex.MW1/3.

7. Post of Junior Attendant (Safaiwala) was offered to the claimant on compassionate ground vide letter dated 31-10-2002, which is Ex.MW1/1. When Ex.MW1/1 was perused, it came to light that the claimant was to remain on probation for a period of one year from the date of his

joining services, which period could be extended depending upon his work performance, attendance and conduct. His confirmation in the services was subject to satisfactory performance of work, on successful completion of training, test and gain of proficiency in reading and writing Hindi. A right was reserved by the management to terminate his services at the end or during the period of probation, without assigning any reason whatsoever. Contents of Ex.MW1/1 makes it clear that the claimant was under an obligation to successfully complete his period of probation, which could be extended depending on his work performance, attendance and conduct. It was clear to the claimant that he cannot seek automatic confirmation on the post, without successful completion of his period of probation.

8. Claimant remained absent unauthorisedly during the period of his probation and was awarded penalty of stoppage of an increment, which was due to him in July, 2004. Since his work performance and conduct were not found to be satisfactory, his period of probation was extended thrice for a spell of three months each, vide order Ex. MW1/3, Ex. MW1/4 and Ex. MW1/5 respectively. A show cause notice was issued to the claimant to which reply was submitted by him, copy of which is Ex. MW1/8. When Ex.MW1/8 was perused it emerges over the record that the claimant tried to explain that he sought leave on medical grounds. He presented therein that at the time of his reply he was physically fit and would serve the management with sincerity and devotion. Comments of his Reporting Officer were sought, who projected that Balraj remained absent unauthorisedly and his track record was irregular. Considering all these facts, the management opted to dispense with his services. Accordingly his services were done away in terms of contract, contained in Ex.MW1/1. It is evident that services of the claimant were rightly dispensed with, since he failed to successfully complete his period of probation.

9. Whether termination of the service of the claimant can be termed as punishment? For an answer to this proposition order Ex.MW1/13 is scanned. Incidents of his past absence were detailed in Ex.MW1/13. It was also detailed therein that despite imposition of penalty, he did not improve his work and conduct. His services were done away under Regulation 11 of Airport Authority of India (General conditions of services and remuneration) Regulation 2003. Contents of Ex.MW1/13 nowhere highlights that termination of his services amounts to punishment.

10. The Apex Court in Purshotam Lal Dhingra (AIR 1958 S.C. 36) laid down two test for determination if the dismissal, etc., is by way of punishment : (i) whether the servant had a right to the post or the rank, or (ii) whether he has been visited with evil consequences. If the case specifies either of the above two tests then it must be

held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service and if the requirement of giving a reasonable opportunity of being heard in respect of those charges, which were foundation of termination of his services, was not complied with, the termination of service must be held bad. Reference can also be made to the precedent in Balbir Singh [1976(3) S.C. C 242].

11. As detailed above the claimant was under period of probation which was extended thrice for a spell of three months each. Probation not was successfully completed by him. In that situation it cannot be said that the claimant had acquired a right to the post of Junior Attendant (Safaiwala). As detailed above his services were dispensed with when he failed to complete period of probation successfully. Therefore, termination of services does not amount to punishment. Resultantly order Ex.MW1/13 cannot be held to be bad.

12. In view of the foregoing reasons it is crystal clear that the action of the management in terminating the services of the claimant was legal, fair and justified. He is not entitled for any relief. His claim is devoid of merits and liable to be dismissed. An award is accordingly passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

DATED: 26-2-2010

नई दिल्ली, 12 मार्च, 2010

का.आ. 894.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भिलाई स्टील प्लांट भिलाई (छत्तीसगढ़) के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 146/02) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-3-10 को प्राप्त हुआ था।

[सं. एल-29011/36/2002-आईआर(एम)]

कमल बाखरू, डेस्क अधिकारी

New Delhi, the 12th March, 2010

S. O. 894—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.146/02) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in Industrial Dispute between the employers in relation to the management of Bhilai Steel Plant Bhilai (Chhattisgarh) and their workman, which was received by the Central Government on 12-3-2010.

[No. L-29011/36/2002-IR(M)]

KAMAL BAKHRU, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****CASE NO. CGIT/LC/R/146/2002****PRESIDING OFFICER: MOHID. SHAKIR HASAN,**

The President,
Metal Mines Workers Union,
Rajhara Branch,
Dalli-Rajhara,
Distt. Durg (M. P.)

...Workman/Union

Versus

The General Manager (Mines),
Bhilai Steel Plant,
Bhilai (Chhattisgarh).

...Management

AWARD

Passed on this 25th day of February, 2010

1. The Government of India, Ministry of Labour vide its Notification No.L-29011/36/2002-IR(M) dated 17-10-2002 has referred the following dispute for adjudication by this tribunal :—

“Whether the action of management of Bhilai Steel Plant in removing services of Shri Chandra Mahato T.O.T.(Fitter), P/No. 213333, Township (Civil) of Rajhara Mines of BSP vide order No. IOC/Raj/CF/2001/34 dated 15-1-2001 is legal and justified? If not, to what relief the workman is entitled?”

2. The case of the workman is that the management of Bhilai Steel Plant served a chargesheet dated 28-8-99 that he has committed a major misconduct under the clause 29 (ii) and (iii) of the Standing Orders Act. It is stated that he has sought appointment by filing a false document claiming himself as a member of Scheduled Tribe and he has disclosed that he was by caste "Kol". It is stated that the caste certificate was issued by the notified authority of the State Government after verification and employment was sponsored by the employment exchange before Selection Committee. It is stated that the caste certificate is valid and genuine and he has been falsely terminated from the service. On these grounds, it is submitted that the termination order is set-aside and the workman be reinstated.

3. The management has also appeared and filed Written Statement. The case of the management is that admittedly a chargesheet was issued against him for the act of misconduct that he has disclosed wrongly as a member of Scheduled Caste at the time of seeking

appointment. It is stated that on verification, it was found that he was not of Scheduled Tribe and is "Teli" and the said category does not come under Schedule Tribe Category. It is stated that the workman has committed acts of misconduct under the provision of clause 29 (ii) and (iii) of the Standing Order (Mines). On these grounds, it is submitted that the Departmental Enquiry was conducted. Thereafter he was found guilty of the misconduct and accordingly he was terminated from service after giving full opportunity.

4. During the course of proceeding, the workman has filed an application that he does not want to contest the suit for reason of financial conditions. It is also submitted that no dispute award be passed. The management has also no objection if no dispute award is passed in the case as has been prayed by the workman.

5. Considering the entire submissions as well as the documents on the record, I find that it is proper to pass no dispute award. Accordingly the reference is answered.

6. In the result, no dispute award is passed without any order as to costs.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

Date: 25-2-2010

MOHID. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 17 मार्च, 2010

का.आ. 895.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय विमानपत्तन प्राधिकरण के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 65/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-3-10 को प्राप्त हुआ था।

[सं. एल-11012/10/2007-आई आर (एम)।

कमल बाखरू, डेस्क अधिकारी

New Delhi, the 17th March, 2010

S. O. 895.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 65/2007) of the Central Government Industrial Tribunal/Labour Court-01 Delhi now as shown in the Annexure in Industrial Dispute between the employers in relation to management of Airport Authority of India and their workman, which was received by the Central Government on 17-3-10.

[No. L-11012/10/2007-IR(M)]

KAMAL BAKHURU, Desk Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CGIT NO. 1, KARKARDOOMA COURTS
COMPLEX, DELHI**

I.D. No. 65/2007

Shri Dharambir,
S/o Late Shri Lillu Ram,
R/o V & P.O. Budhera,
Distt. Gurgaon, Haryana.

...Workman

Versus

The Chairman,
Airport Authority of India,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi-110037.

...Management

AWARD

1. Conduct of habitual absenteeism on the part of the workman led to a domestic action. He was charge sheeted on 29-10-2002. Domestic enquiry was constituted. He appeared before the Enquiry Officer and admitted his guilt voluntarily. The Enquiry Officer found him guilty of the charge. Disciplinary authority ordered his removal from services vide order dated 23-06-2004. He preferred an appeal, which came to be dismissed on 17-1-2006. He raised a dispute before the Conciliation Officer. When conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal of adjudication, vide order No.: L11012/10/2007-IR(M), New Delhi, dated 11-9-2007, with the following terms:

“Whether the action of the management of Airport Authority of India in imposing the penalty of removal of service on Shri Dharambir, Attendant (safaiwala) (Employee No. 4012) w.e.f. 25-3-2004 is justified and legal? If not, what relief the workman is entitled?”

2. Claim statement was filed by the workman pleading therein that he joined services of the management as permanent attendant (safaiwala) in 1993. He discharged his duties like a disciplined employee, without any complaint to his superiors. In the year 2002-2004 he had to take leave on account of medical grounds. He informed his superior in that regard. A charge sheet was served upon him by the management and a disciplinary enquiry was constituted. He was compelled by the management representative to admit the charges before the enquiry Officer, on the pretext that nothing would happen to him. He admitted the charges on that persuasion. He was awarded penalty of dismissal of services w.e.f. 25-3-2004, which order is illegal and unjustified. Appeal filed by him was dismissed vide order dated 17-1-06. He claimed reinstatement in service with continuity and full back wages.

3. Management demurred the claim pleading that the enquiry conducted against the workman was in accordance with the principles of natural justice. He remained absent for 27 days in July, 99, 14 days in August, 99, 19 days in September 99, 31 days in October, 99, 30 days in November, 99, 22 days in December, 99, 31 days in January 2000, 29 days in February, 2000, 31 days in March, 2000, 19 days in April, 2000, 22 days in May, 2000, 30 days in June 2000, 31 days in July, 2000, 31 days in August, 2000, 30 days in September, 2000, 31 days in October, 2000, 07 days in December, 2000, 24 days in January, 2001, 28 days in February, 2001, 31 days in March, 2001, 30 days in April, 2001, 31 days in May, 2001 and 30 days in June, 2001. He absented himself for 90 days, from January to March, 2003. In April, 2003 he remained absent for 9 days, in May, 03, he remained absent for 5 days, in June, 03, he remained absent from his duties for one day in July, 03 he remained absent from his duties for 23 days, in August, 03, he opted not to attend his duties for 29 days, in September, 03, he was away from his duties for 17 days, and in October, he opted not to attend his duties for 7 days, in November, 03, he did not perform his duties for 16 days. In December, 2003, he was away for whole of the month. He did not perform his duties for 22 days in January, 2004. He was absent from his duties for 27 days in February, 2004. This record makes it conspicuous that he was not attending his duties and opted to remain absent unauthorisedly without any intimation. A charge sheet was served upon him and he admitted the charges before the Enquiry Officer. The Enquiry Officer submitted his report, which was accepted by the Disciplinary Authority. Punishment of removal from service was awarded to him, which was in consonance with the principles of natural justice. He preferred an appeal, which also came to be dismissed. His claim is devoid of merits.

4. On pleadings of the parties following issues were settled.

1. Whether Enquiry conducted by the management was just, fair and proper?
2. As in terms of reference.
3. Relief.

5. Management had examined Shri Manoj Kumar in support of its case. Workman has examined himself in support of his claim. No other witness was examined by either of the parties.

6. Arguments were heard at the bar. Shri S.P. Sharma, authorised representative advanced arguments on behalf of the workman. Shri Firoz Ahmed, authorised representative, raised his submissions on behalf of the management. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No. 1

7. Shri Manoj Kumar swears in his affidavit that the claimant joined the services of the management on 6-12-96 as a regular employee. Thereafter he started remaining absent unauthorisedly. For his unauthorised absence, a memo was served upon him, which is Ex.MW1/1. Articles of charge and imputation of misconduct were served upon him which are Ex.MW 1/2 and Ex.MW 1/3 respectively. List of documents and witnesses were supplied to the claimant, which are Ex.MW 1/4 and Ex.MW 1/5 respectively. Enquiry Officer was appointed vide order Ex.MW 1/7. Dharambir appeared before the Enquiry Officer and tendered his apology copy of which is Ex.MW 1/8. Enquiry Officer submitted his report, which is Ex.MW 1/9. Disciplinary Authority awarded punishment, copy of which order is Ex.MW 1/10. Appeal preferred by the workman was dismissed, vide order Ex.MW1/12. During the course of his cross-examination he admits that the workman appeared before the Enquiry Officer on 4-06-2003, on which date the enquiry was concluded. He projects that letter of apology was submitted wherein the claimant has admitted his guilt.

8. In his testimony workman concedes that he admitted the charges before the Enquiry Officer. When Ex. MW 1/8 was perused it came to light that the claimant admitted the charges before the Enquiry Officer in plain words. He tried to assure the management that he will not commit such mistake in future. consequently it is evident that Ex. MW 1/8 is an unconditional admission of charges by the claimant. Ex. MW 1/9 is the report submitted by the Enquiry Officer wherein he had concluded that charges against the claimant stands proved. The Disciplinary Authority considered report of the Enquiry Officer and awarded punishment of removal of service vide order Ex. MW1/10.

9. In a domestic enquiry the Enquiry Officer is under an obligation to conduct the proceedings in accordance with requirements of statutory provisions of rules. The procedure for departmental enquiry may be laid down by awards or settlements. In private sector. The procedure for holding of an enquiry is laid down by standing order framed under the Industrial Employment (Standing Orders) Act, 1940, which standing order have force of law. Even where no procedure for enquiry has been laid down, the employer is to follow a reasonable procedure for according an opportunity to the employee to defend himself in the matter. Since the object of departmental enquiry is to find out whether punishment should not be imposed against an employee, the principles of natural justice are applicable to departmental enquiries, even though there may be no rule or statutory provisions governing the procedure of departmental enquiry before such authority. The principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial or quasi judicial authority, while

making an order affecting those rights. These principles are now well settled and described thus:

- (i) That every person whose civil rights are affected must have a reasonable notice of the case he has to meet.
- (ii) That he must have reasonable opportunity of being heard in his defence.
- (iii) That the hearing must be by an impartial Tribunal that is, a person who is neither directly nor indirectly a party to the case.
- (iv) That the authority must act in good faith and not arbitrarily but reasonably.

10. To show that the domestic enquiry stood vitiated the workman may highlight the following propositions.

- (i) The enquiry is defective on account of violations of principles of natural justice.
 - (a) The employees was not informed of the charge against him.
 - (b) No evidence was taken in support of the charges.
 - (c) The witnesses in support of the charges. have not examined in the presence of the employee.
 - (d) The employee was not given a fair opportunity to cross examine the witnesses examined by the management.
 - (e) The employee was not given a fair opportunity to examine witnesses including himself in his defence, when he so wishes, on any relevant matter.
 - (f) The Enquiry Officer has not written a report giving his findings with reasons.
 - (g) The dismissal is founded on a ground which was not included in the charge sheet served upon him in respect of which the enquiry was held.
 - (h) The dismissal is founded on the interrogation of the workmen without examining any witnesses in support of the charges.
- (ii) The enquiry was not held in accordance with the relevant standing order of the establishment.
- (iii) The enquiry officer was biased against the employee.

11. Claimant could not show that the Enquiry Officer was a judge of his own case. Out of enquiry report Ex. MW 1/9 it is evidently clear that he had considered the facts as well as admission of the charges made by the claimant and recorded his finding. It is evident that he acted as an independent person, without any bias against the claimant. The claimant made his breast clear and admitted

the charges voluntarily. It is not the case that he was persuaded by some one to admit the charges. Even before the Tribunal claimant concedes that he had admitted charges voluntarily. Consequently, it emerge over the record that the enquiry conducted by the management was in accordance with the principles of natural justice and fair play. Issue is, therefore, answered in favour of the management and against the claimant.

Issue No. 2

12. To assess legality or justifiability of the action of the management I am called upon to take into account the documents proved over the record. Ex. MW 1/1 is the memo served upon the workman. Articles of charge and imputation of misconduct we served upon him which are Ex. MW 1/2 and Ex. MW 1/3 respectively. Workman appeared before the Enquiry Officer and tendered his apology, Copy of which is Ex. MW 1/8. Report of the Enquiry Officer is proved as Ex. MW 1/9. Disciplinary Authority awarded punishment, copy of which order is Ex. MW 1/10. Appeal preferred by the workman was dismissed vide order Ex. MW 1/12.

13. The workman admitted the charges before the Enquiry Officer in plain words He tried to assure the management that he will not commit such mistake in future. Ex. MW 1/8 makes it clear that the workman admitted the charges unconditionally. He remained absent for a considerable long period, without any excuse. Enquiry Officer found him guilty of the misconduct as detailed by him in his report Ex. MW 1/9. The Disciplinary Authority considered the report and concurred with the Enquiry Officer. He awarded punishment of removal from services vide his order Ex. MW 1/10. Question for consideration comes as to whether punishment awarded to the workman is shockingly disproportionate to his misconduct. For an answer, facts are to be considered again. As detailed above, the workman joined services with the management on 6-12-96. He served the management for two and a half years. Thereafter, he started absenting himself from duties unauthorisedly, since July 1999 till November 2001, he opted to remain absent from his duties. However that period of absence was not made subject matter of the enquiry, for

intimation of an action against the workman. His long spell of absence for the above period has not proved to be a turning point for the workman.

14. From December 2001 till September 2002, he remained absent for 256 days. The management served a charge-sheet for that absence. The workman admitted the charges on 4-6-2003. He gave an assurance in Ex. MW 1/8 that in future he will not give any chance of complaint to the management. However his words sounded empty. In July 2003, he remained absent for 23 days, in August 2003, he opted not to attend his duties for 29 days, in September 2003, he remained away from his duties for 17 days. He remained absent for 7 days in October, 16 days in November, 31 days in December 2003, 22 days in January 2004 and 27 days in February 2004. All these facts make it clear that the workman was habitual in remaining absent from his job in an unauthorised manner.

15. Absence without leave is a misconduct warranting disciplinary punishment. No employee can claim leave of absence as a matter of right and remaining absent without leave will constitute violation of discipline. Continuous absence from work without leave would justify action of the management in discharging such an employee from service. Nothing has been brought over the record by the workman that his absence from duty was on account of circumstances beyond his control. No case of sudden or serious illness of workman or his relation has been put forward. Facts of this case justify penalty of removal from service upon the workman. Therefore action of the management is found to be legal and justified. Hence issue is answered in favour of the management.

Relief.

16. Dharambir absented himself from duty for long intervals in an unauthorised manner. He was in the habit of remaining absent from his duties without sanction of leave. Misconduct of remaining absent justify his removal from service. An award is, accordingly, passed. It be sent to the appropriate government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated : 19-2-2010